





MESSAGE.

DUFFERIN.

The Governor General transmits for the information of the Senate and House of Commons copies of a correspondence which has taken place with the Right Honorable the Secretary of State for the Colonies, relating to the commutation of the sentence of death passed on Ambroise Lepine, for the murder of Thomas Scott, at Fort Garry.

Government House,
8th February, 1875.

CANADA.

copy 7. —No. 305.)

GOVERNMENT HOUSE,
OTTAWA, 10th December, 1875.

MY LORD,—

I have the honor of forwarding to Your Lordship a very important Order in Council, which my Ministers have desired me to transmit, with the request that Your Lordship would be pleased to give it your most earnest consideration.

2. The purport of the document is to move Your Lordship and the Imperial Government to undertake the settlement of what is known here as the "Amnesty question."

3. The reasons for which my Ministers are desirous of seeking Your Lordship's assistance are founded on the fact of the circumstances out of which the "Amnesty question" has grown, having occurred at a time anterior to the assumption by Canada of the Government of the North-West. They are further impelled to adopt this course by the obvious embarrassments attending the settlement of a controversy, whose aspects are alleged to have been already modified by the intervention of Imperial authority, and which are so seriously complicated by the vehement international antagonism which they have excited in this country. Under these circumstances my advisers are of opinion that a dispassionate review of the whole question emanating from so impartial a source as Her Majesty's Government would tend more to tranquilize the public mind, and secure a loyal acquiescence in whatever decision may be arrived at, than would be the case were they themselves to undertake the settlement of the dispute.

4. Your Lordship is so well acquainted with the history of the troubles which were occasioned by the somewhat precipitate attempt made in the year 1869 to incorporate the present Province of Manitoba with the Dominion, before the conditions of the proposed union had been explained to its inhabitants, that I need not do more than recapitulate the special incidents which directly bear upon the subject under consideration. It will be sufficient to remind your Lordship that on the news of these disturbances reaching Ottawa, emissaries were despatched to Fort Garry in the persons of the Vicar-General Thibault, Colonel de Salaberry, and Mr. Donald Smith, with the view of calming the agitation which had arisen, and of giving ample assurances to those whom it might concern, that both the Imperial and the Canadian Governments were anxious to secure to the people of the North West every right, privilege, and immunity to which they might be entitled. Each of these personages was furnished with

Dec 4th, 1874

copies of a Proclamation, drawn up under the instructions of the Imperial Government by Lord Lisgar, couched in the most conciliatory language, and concluding with the following paragraph:

"And I do lastly inform you that in case of your immediate and peace-able obedience and dispersion, I shall order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law.

"JOHN⁶ YOUNG."

5. At the time this instrument was placed in the hands of these gentlemen, no blood had been shed, nor any very heinous crime committed; but on arriving at their destination, their papers were seized by the insurgents, and they were precluded either on this or on some other account from issuing the Proclamation in question. There can be little doubt, however, that its purport must have been known to Riel and his partizans before the murder of Scott was perpetrated—an event which took place some time after these three gentlemen had arrived at Fort Garry.

6. Subsequently, by an invitation of the Canadian Government conveyed to him when at Rome through Monsieur Langevin, Minister of Public Works, Archbishop Taché returned to Canada, with the view of placing his services at the disposal of the Dominion Government. On his arrival at Ottawa, he was provided with another copy of the Governor General's Proclamation, as well as with an official letter of instructions from the Secretary of State, Mr. Howe, of which I subjoin a copy:—

DEPARTMENT OF SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 16th February, 1870

The Very Reverend the Bishop of St. Boniface

MY LORD,—I am commanded by His Excellency, the Governor General, to acknowledge and thank you for the promptitude with which you placed your services at the disposal of this Government, and undertook a winter voyage and journey; that you might, by your presence and influence, aid in the repression of the unlooked-for disturbances which had broken out in the North-West.

I have the honor to enclose for your information:—

1. A copy of the instructions given to the Honorable Wm. McDougall on the 28th September last;

2. A copy of a further letter of instructions addressed to Mr. McDougall on the 7th November;

3. Copy of a letter of instructions to The Very Reverend Vicar General Thibault on the 4th December;

4. Copy of a Proclamation issued by His Excellency, The Governor General, addressed to the inhabitants of the North-West Territories by the express desire of the Queen;

5. Copy of a letter addressed to the Secretary of State, by Donald A. Smith, Esq., of Montreal, on the 21th November;
6. Copy of a letter of instructions addressed by me to Mr. Smith, on 10th December last;
7. A semi-official letter, addressed by the Minister of Justice, on the 3rd January, 1870, to Mr. Smith; also,
8. Copy of the Commission issued to Mr. Smith, on the 17th of January, 1870.

Copies of the Proclamation, issued by Mr. McDougall, at or near Pembina, and of the Commission issued to Colonel Dennis, having been printed in the Canadian papers, and widely circulated at the Red River, are, it is assumed, quite within your reach, and are not furnished; but it is important that you should know that the proceedings by which the lives and properties of the people of Rupert's Land were jeopardized for a time, were at once disavowed, and condemned by the Government of this Dominion, as you will readily discover in the despatch addressed by me to Mr. McDougall, on the 24th of December, a copy of which is enclosed.

Your Lordship will perceive, in these papers, the policy which it was, and is, the desire of the Canadian Government to establish in the North-West. The people of Canada have no interest in the erection of institutions in Rupert's Land which public opinion condemns; nor would they wish to see a fine race of people trained to discontent and insubordination, by the pressure of an unwise system of government, to which British subjects are unaccustomed or averse. They looked hopefully forward to the period when institutions, moulded upon those which the other Provinces enjoy, may be established, and, in the meantime, would deeply regret if the civil and religious liberties of the whole population were not adequately protected by such temporary arrangements as it may be prudent at present to make.

A convention has been called, and is now sitting at Fort Garry, to collect the views of the people, as to the powers which they may consider it wise for Parliament to confer, and the Local Legislature to assume. When the proceedings of that conference have been received by the Privy Council, you may expect to hear from me again; and, in the meantime, should they be communicated to you on the way, His Excellency will be glad to be favoured with any observations that you may have leisure to make.

You are aware that The Very Reverend The Vicar-General Thibault, and Messrs. Donald A. Smith, and Charles de Salaberry, are already in Rupert's Land, charged with a Commission from Government. Enclosed are letters to those gentlemen, of which you will oblige me by taking charge; and I am commanded to express the desire of His Excellency that you will co-operate with them in their well-directed efforts to secure a peaceful solution of the difficulties in the North-West Territories, which have caused His Excellency much anxiety, but which, by your joint endeavours, it is hoped may be speedily removed.

I have, &c.,

JOSEPH HOWE.

7. At the same time his Lordship also received a letter from Lord Lisgar to the following effect:

Governor General Sir John Young to Bishop Taché.

OTTAWA, Feb. 16th, 1870.

MY DEAR LORD BISHOP,—I am anxious to express to you before you set out, the deep sense of obligation which I feel is due to you for giving up your residence at Rome, leaving the great and interesting affairs in which you were engaged there, and undertaking at this inclement season the long voyage across the Atlantic and a long journey across this continent, for the purpose of rendering service to Her Majesty's Government, and engaging in a mission in the cause of peace and civilization. Lord Granville was anxious to avail himself of your valuable assistance from the outset, and I am heartily glad that you have proved willing to afford it so promptly and generously. You are fully in possession of the views of my Government; and the Imperial Government, as I informed you, is earnest in the desire to see the North-West Territory united to the Dominion on equitable conditions. I need not attempt to furnish you with any instructions for your guidance, beyond those contained in the telegraphic message sent me by Lord Granville on the part of the British Cabinet, in the Proclamation which I drew up in accordance with that message, and in the letters which I addressed to Governor McTavish, your Vicar-General, and Mr. Smith. In this last letter I wrote: "All who have complaints to make or wishes to express, to address themselves to me as Her Majesty's Representative, and you may state, with the utmost confidence, that the Imperial Government has no intention of acting otherwise or permitting others to act otherwise than in perfect good faith towards the inhabitants of the Red River District and of the North-West."

"The people may rely that respect and attention will be extended to the different religious persuasions, that title to every description of property will be carefully guarded, and that all the franchises which have subsisted, or which the people may prove themselves qualified to exercise, shall be duly continued or liberally conferred."

"In declaring the desire and determination of Her Majesty's Cabinet, you may safely use the terms of the ancient formula, that right shall be done in all cases."

I wish you, my dear Lord Bishop, a safe journey, and success in your benevolent mission.

Believe me, with all respect,
Faithfully yours,

(Signed,)

JOHN YOUNG.

Right Rev. Bishop Taché.

To this was added a private letter from Sir John Macdonald, which will be found at page 19 of the Canadian Blue Book, and which, towards its conclusion, contained the following paragraph:

"Should the question arise as to the consumption of any stores or goods belonging to the Hudson Bay Company by the insurgents, you are

"authorized to inform the leaders that if the Company's Government is restored, not only will there be a general amnesty granted, but in case the Company should claim the payment for such stores, that the Canadian Government will stand between the insurgents and all harm."

8. At the time these communications were made to Archbishop Taché no news had arrived of Riel's proceedings in regard to Scott. In the meantime a convention of forty of the representative inhabitants of the North West had been organized for the purpose of hearing what Messrs. Donald Smith, Thibault and De Salaberry, had been commissioned to say on behalf of the Canadian Government, and in consequence of the representations made by Mr. Smith, the convention determined to select and send to Ottawa three delegates, for the purpose of communicating the demands of the people in the North West to the Dominion authorities, and of effecting a settlement of the terms upon which they were to enter Confederation. After this business was concluded, the Convention proceeded to the erection of the so-called Provisional Government, of which Riel was named the President. These occurrences took place on the 10th of February.

See Mr. Donald Smith's narrative, p. 154, par. 1, Imp. B. Book.

9. On the 4th March, Scott was shot.

10. On the 9th March, Archbishop Taché arrived at Red River, and in a letter of June 9th, 1870, he informed the Secretary of State, Mr. Howe, that he had promised, in the name of the Imperial and Provincial Governments, both to the insurgents generally, and to Riel and Lepine in particular, a full amnesty for every breach of the law of which they had been guilty, including the murder of Scott. On receipt of this communication Mr. Howe replied to Archbishop Taché in the following terms:—

Honorable Joseph Howe to Archbishop Taché.

"OTTAWA, 4th July, 1870.

"MY LORD,—Your letter of the 9th June, which reached me yesterday, has been laid before the Privy Council, and has received their consideration.

"Your Lordship states that personally you felt no hesitation in giving in the name of the Canadian Government, an assurance of a complete amnesty.

"Your Lordship has no doubt read the debate and explanations which took place in Parliament during the discussion of the Manitoba Bill. The question of amnesty was brought forward, and the answers and explanations given by the Ministers in the House of Commons were that the Canadian Government had no power to grant such an amnesty, and that the exercise of the prerogative of mercy rested solely with Her Majesty the Queen.

"The Rev. Father Richot and Mr. Scott must, on their arrival, have informed your Lordship that, in the repeated interviews which they had with Sir John A. Macdonald and Sir George E. Cartier, they were distinctly informed that the Government of the Dominion had no power as a Government to grant an amnesty; and I would add that this Government is not in a position to interfere with the free action of Her Majesty in the exercise of the Royal clemency.

"Her Majesty's Imperial Ministers can alone advise the Queen on such an important matter when called upon to do so. No doubt can be entertained that Her Majesty, advised by her Ministers, will on a calm review of all the circumstances discharge the duty of this high responsibility in a temperate and judicial spirit.

"The foregoing explanations are given to Your Lordship in order that it may be well understood that the responsibility of the assurance given by Your Lordship of a complete amnesty, cannot in any way attach itself to the Canadian Government.

"The conversations to which Your Lordship alludes as having taken place between Your Lordship and some Members of the Canadian Cabinet, when Your Lordship was in Ottawa about the middle of the month of February last, must necessarily have taken place with reference to the proclamation issued by His Excellency the Governor General, on the 6th December last, by command of Her Majesty, in which His Excellency announced that in case of their immediate and peaceable dispersal, he would order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law at Red River.

"Though I have felt it my duty to be thus explicit in dealing with the principal subject of your letter, I trust I need not assure you that your zealous and valuable exertions to calm the public mind in the North West are duly appreciated here, and I am confident that when you regard the obstructions which have been interposed to the adoption of a liberal and enlightened policy for Manitoba, you will not be disposed to relax your exertions until that policy is formally established.

"I have, &c.,

"(Signed),

JOSEPH HOWE.

"Right Reverend,

"The Bishop of St. Boniface,

"Red River."

11. Such are the circumstances out of which has arisen the "Amnesty question,"—a controversy which for these last three years has agitated the Dominion and embarrassed its successive Governments; Archbishop Taché contending that both the Imperial and Colonial Governments were bound by the promises of immunity he gave to Riel and his associates; while the late Governor General, Her Majesty's Government, and the present and late Canadian Administrations, have declined to recognize the force of any such obligation.

12. Last session, at the instance of those who may be supposed to coincide with the Bishop's view of the case, a select committee of the House of Commons was appointed to enquire into "the causes which retarded the granting of the amnesty announced in the proclamation of the Governor General of Canada, and also whether and to what extent other promises of amnesty have ever been made." A copy of the evidence taken by the committee, together with their report, I transmit by this mail. Although these documents supply the best materials for the elucidation of the two points above referred to, it may be convenient that I should subjoin a short summary of the merits of the case as it presents

itself to my understanding, though without pretending to exhaust the argument on either side.

13. A full and complete amnesty to Riel and the authors of Scott's death appears to be claimed on five several grounds.

First,—Archbishop Taché claims an amnesty on the plea that he went to Red River as a plenipotentiary, empowered both by the Imperial and the Dominion Governments to secure the tranquility of the country by the issue of such assurances of immunity to those engaged in the recent disturbances as he should deem fit. In support of this view he founds himself, as he himself states, pages 93-4 of the Canada Blue Book: First, as regards the Imperial Government, on Lord Lisgar's letter and proclamation, and. Secondly, as regards the Local Government, on the paragraph I have already quoted in Sir John Macdonald's communication of the 16th February, 1870. I confess I do not think that his Lordship's argument can be sustained. In the first place, the Archbishop's claim to such extensive powers is certainly invalid. The nature of his position is clearly defined in Mr. Howe's official dispatch of the 16th February, 1870. The instructions already conveyed to Messrs. Thibault, de Salaberry and Smith, are communicated to him as additional guides for his conduct, and he is further invited to associate himself, and to act conjointly with these persons. There are, therefore, no grounds for regarding the mission or powers of the Bishop as differing either in character or extent from those entrusted to the gentlemen who had preceded him; and there is certainly no intimation in his instructions that he was authorized to promulgate a pardon in the Queen's name for a capital felony,—still less can it be contended that he was empowered to expunge, on his own mere motion, a principal term from a Royal Proclamation. Mr. Smith and his colleagues had been already furnished with Lord Lisgar's Proclamation, but so far from considering that document as conveying a warrant of immunity to Riel, Mr. Smith expressly states that after the murder of Scott he refused to speak with him. On a reference, moreover, to the wording of the only sentence in Lord Lisgar's Proclamation which proffers grace to the insurgents, it becomes self-evident that it had in contemplation those minor political offences of which news had reached the ears of the Government when the document was framed.

14. That this was its intention becomes even more apparent when we read the sentence in Sir John Macdonald's letter, to which the Bishop next appeals. In that communication Sir John Macdonald says,—“Should the question arise as to the consumption of any stores or goods belonging to the Hudson Bay Company by the insurgents, you are authorized to inform the leaders that if the Company's Government is restored, not only will there be a general amnesty granted, but in case the Company should claim the payment for such stores, that the Canadian Government will stand between the insurgents and all harm.” It would seem impossible to expand the permission thus conveyed to the Bishop by Sir John, to promise the rebels protection from the monetary demands of the Hudson Bay Company, into an authority to condone such a savage murder as that of Scott's. But even were this point to be conceded, there would still remain an insurmountable difficulty in the way of proving Monseigneur Taché's case. The terms of pardon, both in Lord Lisgar's Proclamation and Sir John's letter, were made conditional, in the one, “on the immedi-

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See Mr.
Smith's
narrative,
Imp. Blue
Book,
page 156.

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Can. Blue
Book, last
par.

"ate and peaceable obedience and dispersion of the insurgents," and in the other, "on the restoration of the Company's Government."

15. But none of these requirements were complied with. Scott was put to death some weeks after the arrival of Messrs. de Salaberry, Thibault, and Smith, to whom the proclamation had been originally confided, and by whom its contents, at all events, must have been communicated to Riel before the accomplishment of that tragedy; and though immediately after the Bishop's advent, and at his instance, one half of the English prisoners were released, the rest were kept in prison for more than a week longer; Riel and his associates still remained in arms, continued to prey upon the goods within their reach, and persisted in the exercise of their illegal authority. It is true many considerations may be adduced to mitigate the culpability of the latter portion of these proceedings; but be that as it may, they manifestly barred the effect of the conditional promises of forgiveness which the Bishop, even from his own point of view, was alone authorized to announce.

16. I understand His Lordship further to plead that the ultimate negotiations, which secured to the North-West the constitutional rights they enjoy under the Manitoba Act, directly flowed from the assurances of a complete amnesty which he promulgated; but although it would be difficult to exaggerate either the purity of the motives by which this Prelate was actuated in all that he did and said, or to over-estimate the self-sacrificing patriotism which induced him to tear himself from the attractions of Rome, in order to encounter the hardships of a winter journey, for the sake of his fellow countrymen in Red River, or to deny that his exhortations and remonstrances had an immediate and beneficial effect in restraining Riel and his companions, and in superinducing a feeling of security in Winnipeg, it must still be remembered that the people of the North-West had chosen their delegates, and had consented to treat with the Canadian Government some weeks before the Bishop had appeared upon the scene. In conclusion, it is to be noted that immediately Mr. Howe, the Secretary of State, received the information of the promise made by His Lordship to Riel and Lepine, he at once warned him that he had done so on his own responsibility, and without the authority of the Canadian Government.

17. The Archbishop refers to a private letter of Sir George Cartier's as having neutralized the language of Mr. Howe's official communication; but to doctrine of this description I cannot subscribe. In the first place, I do not think the letter in question bears the interpretation put upon it by the Archbishop; and even if it did, it must be held that no private communication made by a single member of an Administration without the cognizance of his colleagues, can override an official despatch written in their name and on their behalf by the head of the Department specially responsible for the conduct of the business in hand. Were such a view to prevail, every Government, and the Crown itself, would be at the mercy of any inconsiderate, rash or treacherous member of a ministry.

18. The view taken by Sir John Macdonald, who was Premier at the time that the Archbishop left for the North-West, of His Lordship's powers and of the nature of his mission, is set forth, in the honourable gentleman's evidence at page 100 of the Canadian Blue Book, and I need not say is entirely confirmatory of the conceptions I have derived from the written instructions the Archbishop received and the correspondence which took place with him.

See Mr. D. Smith's narrative, page 154 Imperial B. Book.

Page 34, Can. Blue Book.

Page 38, Can. Blue Book.

Page 100, Can. Blue Book.

19. Under these circumstances, I am of opinion that the Crown is not committed to the pardon of the murderers of Scott, upon the ground that the Archbishop was in any sense authorized to make a promise to that effect.

20. The next plea urged by those who demand a full and complete amnesty, is based upon the occurrences which took place during the visit of Judge Black and Messrs. Ritchot and Scott to Ottawa, in April, 1870, as delegates from the people of the North-West, and on the alleged purport of the conversations which took place between Archbishop Taché, Lord Lisgar, and Sir George Cartier, at Niagara. With respect to the transactions of this date, we have unfortunately no public correspondence or other official intercommunications in which they have been recorded, and so far as regards the individual statements of the personages concerned, there is unhappily a direct conflict of assertion.

21. On the one hand, Abbé Ritchot and the Archbishop state positively that an amnesty to Riel was explicitly promised both by Lord Lisgar, Sir Clinton Murdoch, Sir John Macdonald, and Sir George Cartier. On the other hand, this statement is denied in the most emphatic manner by each and all of these gentlemen. The Abbé Ritchot's affidavit, in which a history of his interviews with the Governor General and other members of the Administration is set forth with considerable particularity, will be found at page seventy-two of the Canadian Blue Book. The denial of the correctness of the Abbé Ritchot's asseverations is conveyed, first, in a despatch to Lord Kimberley from Lord Lisgar, dated 25th April, 1872, and in a letter from the same nobleman to Sir George Cartier, dated the 21st February, 1873, page 104 of the Blue Book; in a letter from Sir Clinton Murdoch to Mr Herbert, dated 5th March, 1873, on page 104, and again in another letter of the 6th March of the same year; in a letter from Sir George Cartier to Sir John Macdonald, dated 8th February, 1873; and in Sir John Macdonald's evidence, page 107. But a still more significant light is thrown upon what occurred, by a despatch from Sir Clinton Murdoch to Sir Frederick Rogers, dated 28th April, 1870, page 193 of the Blue Book. This communication was contemporary with the event recorded. The statement made was not a reply to any leading question, nor evoked by any special reference. It was simply a narrative drawn up for the information of the Under Secretary of State for the Colonies, as to the purport of Sir Clinton Murdoch's conversation with his interlocutor, the Abbé Ritchot, immediately after the interview had occurred. In the fifth paragraph of that document, page 193 of the Blue Book, Sir Clinton Murdoch says:—"The 19th condition would secure an indemnity to Riel and his abettors for the execution of Scott, and to all others for the plunder of the Hudson Bay Company's stores, and for other damages committed during the disturbances; concessions which this Government could not venture even if it had the power to grant, while the condition which, though not contained in the terms, was conveyed to Judge Black and the other delegates in writing, that whatever was agreed to here must be subject to confirmation by the Provisional Government, would have involved a recognition of the authority of Riel and his associates."

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Book.

Page 104,
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Page 193,
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"Under these circumstances there was no choice but to reject these terms."

22. Of course, it is a very invidious office to pronounce an opinion as

to the respective accuracy of statements so conflicting, emanating from such eminent personages, and adduced. I have no doubt, by every individual concerned in the most perfect good faith; but when it is remembered that Lord Lisgar had not even the power to make the promise which he is alleged to have given, and that he and Sir Clinton Murdoch and Sir John Macdonald are so perfectly in accord as to what passed, one can only conclude that the Abbé Ritchot, through the unfortunate circumstance of these conversations having been conducted in a language with which he was not familiar, must have derived a totally wrong impression of what had been said.

23. This view of the case is in a great measure confirmed by the evidence of Mr. Sulte, page 181 of the Blue Book, in which he states that one day Father Ritchot said to him in reference to his recent interview with Lord Lisgar,—“As I do not understand English very well, I am not satisfied with what His Excellency said to me at our interview.” From this it may be gathered that the reverend gentleman has shown some precipitancy in consigning to an affidavit so elaborate a record of a conversation of which he himself admits he carried away an imperfect apprehension.

24. Cognate to this branch of the inquiry are the allegations advanced by Archbishop Taché as to his interview with Lord Lisgar at Niagara, 23rd July, 1870. The Archbishop does not appear to maintain that upon this occasion Lord Lisgar made him any specific promise, but he says that His Excellency, being unwilling to enter into any discussion upon Red River affairs, referred him to Sir George Cartier, and that Sir George Cartier then repeated those assurances, as on Lord Lisgar's behalf, to which the Archbishop attaches so much importance. As the facts connected with this incident are fully set forth in the Archbishop's statement on page 40 of the Blue Book, I need not further refer to them.

25. With regard, however, to Sir George Cartier's general attitude, language, and correspondence, in reference to the whole of this subject, I am ready to admit that there appears to have been a certain amount of ambiguity and want of explicitness in his utterances, which undoubtedly encouraged the Archbishop, Father Ritchot and others, to entertain larger expectations in respect to the extent of the suggested amnesty than he was justified in exciting.

26. I do not for a moment imagine that Sir George Cartier intended to mislead these gentlemen, but he evidently himself leaned to the opinion that the clemency of the Crown might be extended with advantage to Riel and his associates; and his naturally sanguine temperament led him to anticipate that as the public excitement calmed down, and years went by, he would have sufficient influence to obtain immunity for those in whose behalf the Archbishop and Abbé Ritchot were interesting themselves. As a consequence, the tenor of his language implied that if only matters were peaceably settled in Red River, and the population quietly submitted to the new order of things, a settlement would ultimately be arrived at satisfactory to all parties. But though this forecast of events was in his mind, and coloured his thoughts and language, it does not appear from the evidence, that he ever made any specific promise in respect of the murderers of Scott. On the contrary, he was always very careful to state that the power of granting a pardon

to them did not reside with the Canadian Government, but with the Queen and Her Imperial advisers. As Sir John Macdonald observes, he and the Abbé Ritchot and the Archbishop appear to have been moving "in different planes." Both make use of the word "amnesty," but Sir George always referred to an "amnesty" as applicable to the general body of insurgents, and to political offences, whereas the Archbishop and the Abbé were solely preoccupied with the thought of securing an "amnesty" for Riel and his fellows. Be this, however, as it may, to my apprehension it cannot be for a moment contended that Sir George Cartier's casual conversations and private letters can bind the Imperial Government.

27. The third plea on account of which a full and plenary amnesty is demanded is that the authorities who ordered Scott's execution were *à de facto* Government, duly constituted by the will of the community, and that it was consequently a legitimate proceeding, and only reprehensible as an error of judgment. I think it but fair, in reference to those who hold this opinion, to call your Lordship's attention to the fact that the Convention which erected the so-called Provisional Government and placed Riel at its head, was composed of a number of French and English delegates, fairly elected from the population at large; that persons of very great respectability were members of it, and took part in its proceedings; that Mr Donald Smith, the Canadian Commissioner, and the person who was instructed to take up the Government of the North West on behalf of the Hudson Bay Company in the event of Governor McTavish being precluded by ill-health from exercising his functions, appeared before it as the exponent of the views of the Canadian Government; and that the delegates it chose were subsequently recognized as duly authorized to treat with the Dominion Executive on behalf of the North West community. An attempt has been made to show that these delegates really held their appointment from Riel, and were to be considered as commissioned by his Government. This, however, was not so; they were selected, and the terms they were instructed to demand were settled, before the election of Riel to the so-called Presidency. On the other hand, it is to be noted that when the proposal to constitute a Provisional Government was mooted in the Convention, a certain portion of the English Deputies declined to take part in the proceedings, until they had ascertained whether or no Governor McTavish, the legal ruler of the territory, still considered himself vested with authority. A deputation accordingly was appointed to wait upon him in his sick chamber, for this gentleman had unfortunately during many previous weeks been suffering from the mortal disease of which he soon after died. In reply to their inquiries, Governor McTavish told them that he considered his jurisdiction had been abolished by the Proclamation of Mr. McDougall, that he was "a dead man," and that they had, therefore, better construct a Government of their own to maintain the peace of the country. Returning to their colleagues, the deputation announced to the Convention what Governor McTavish had said, and, as a result, Riel and his colleagues were nominated to their respective offices. But though these proceedings thus received a certain sanction at the hands of the representatives of the population of the North West, it does not appear to me to affect Riel's culpability with respect to Scott. In the first place, as has been very clearly laid down by the Chief Justice of Manitoba, in his

charge to the jury on the Lepine trial, it is not possible for any lawful executive authority to spring into existence within Her Majesty's Dominions, unless it emanate from Herself. Without, however, laying too much stress upon the purely legal aspect of this part of the question, it is very evident that the killing of Scott was not an exercise of jurisdiction known to any form of law, but an inhuman slaughter of an innocent man, aggravated by circumstances of extraordinary brutality. In company with a certain number of other Englishmen, Scott had started from a place called Portage la Prairie, with the view apparently of endeavouring to rescue a number of persons who up to this time Riel had been holding prisoners in Fort Garry, but at the entreaty of those who were anxious to prevent the outbreak of Civil War, the party were induced to give up their project and to return home. Scott and his companions were captured as they were passing back to their own part of the country. The utmost alleged against Scott is that he used violent language in prison, and that he had alluded to an intention of capturing Riel and retaining him as a hostage for the release of the prisoners already referred to; but even these allegations were not proved, nor, had they been proved ten times over, could they have rendered him liable to serious punishment. Even the decencies of an ordinary drum head court martial were disregarded. The trial, if it can be so termed, was conducted in the absence of the accused, who was confronted with no witnesses, nor furnished with any indictment, nor allowed to plead for his life. The further details of the tragedy are so horrible, if the statements in the evidence can be relied on, that I will not shock your Lordship by repeating them; suffice it to say, that all the special pleading in the world will not prove the killing of Scott to be anything else than a cruel, wicked, and unnecessary crime; nor, had the origin of Riel's authority been even less questionable, would it have invested him with the right of taking away the life of a fellow-citizen in so reckless and arbitrary a manner. I have, therefore, no hesitation in concluding that any claim for the extension of an amnesty to Riel founded on the assumption that the murder of Scott was a judicial execution by a legitimately constituted authority, must be disallowed.

28. A fourth consideration occasionally urged, though not with any very great persistence, by the apologists of Riel, is that when Sir Garnet Wolseley's forces had taken possession of the Territory of Red River, a man of the name of Goulet, one of those who had been concerned in the murder of Scott, was pursued by certain persons, of whom two belonged to a Canadian regiment, until he was frightened into the river and drowned in his attempt to swim across it. How far the foregoing is an accurate account of this transaction I know not. If a murderous assault of this description can be brought home in a court of justice to any individuals, they ought, of course, to be dealt with in due course of law; but it is idle to allege such a circumstance as exonerating the authors of another deed of blood.

29. There is a further plea which has been sometimes urged, not indeed as of itself sufficient to command an amnesty, but as communicating a cumulative force to those already mentioned, namely, the transmission of money to Riel from the Government of the day on condition of his leaving the country, and his subsequent resignation of his seat for Provencher in order to make room for Sir George Cartier; but with

transactions of this nature the Imperial Government cannot be expected to concern itself.

30. I therefore pass on to the fifth consideration, which is adduced as a reason why the Imperial Government should concede an amnesty to the murderers of Scott; and to the plea which I am about to exhibit, I must ask your Lordship to give your earnest attention, as it appears to me to involve the consideration of a semi-legal question of very great moment, the ultimate decision of which will not only affect the case of Riel, but also that of the prisoner Lepine, now left for execution in Winnipeg gaol.

31. In the year 1871 a rumour prevailed in the Province of Manitoba— at that time incorporated with the Dominion, and under the jurisdiction of Her Majesty's Lieutenant Governor, the Honourable Mr. Archibald—that a considerable body of Fenians were gathered along its southern frontier, and were prepared to make a very formidable irruption over the border. In order to understand the gravity of the situation, it must be remembered that the leader of this movement was a man of the name of O'Donoghue, who had been associated with Riel in his insurrectionary movement. A very considerable probability consequently existed that O'Donoghue and his people might be acting in concert with the French leaders of the previous revolt. Mr. Archibald was alone, cut off by distance from the advice and countenance of the central authorities, and thrown entirely upon his own resources. He had no military forces worth speaking of with which to confront the invaders, and he was administering a Province inhabited by distinct nationalities and distracted by differences of religious faith. Only a few months before, a considerable proportion of its population had been arrayed in arms against the Queen's authority and their fellow-subjects. Under these circumstances it can be readily understood that a person in Mr. Archibald's situation would feel it his primary duty to sacrifice every other interest to the defence of the Province over which he presided, and to the safety of the population for whose welfare he was responsible. Acting upon these considerations Governor Archibald determined to appeal to the loyalty of the French Metis and their leaders; but these last were no others than Riel, Lepine, &c., the very men for whose apprehension writs had been issued on a capital charge. Notwithstanding the anomaly of such a procedure, Mr. Archibald concluded to enter into relations with these persons. The account of what he did and the reasons which guided his conduct are set forth in a very perspicuous manner in a narrative which will be found at page 139 of the Blue Book.

Page 139,
Can. Blue
Book.

32. From the statements therein contained it will be observed that the Lieutenant Governor reviewed the troops which had been collected under the command of Riel, Lepine and their companions; that he accepted their services, that he promised them at least a temporary immunity from molestation on account of the crime of which they were accused, that he shook hands with them, that he received a letter signed by them, and that through his Secretary he addressed to them an official reply, complimenting them on the loyalty they had shown and the assistance they had rendered. He further states that he has convinced himself—though Sir John Macdonald appears to have had misgivings on this point—that this exhibition of fidelity was genuine and *bona fide*, and that it largely contributed to the preservation of Her Majesty's Dominions from insult and invasion. In short, he is satisfied, to use his own lan-

Page 147,
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Book.

guage, that "if the Dominion has at this moment a Province to defend and not one to conquer, they owe it to the policy of forbearance. If "I had driven the French half-breeds into the hands of the enemy, "O'Donoghue would have been joined by all the population between the "Assineboine and the frontier. Fort Garry would have passed into the "hands of an armed mob, and the English settlers to the north of the "Assineboine would have suffered horrors it makes me shudder to contemplate."

33. Of course I am not prepared to say whether or no the Lieutenant Governor's appreciation of the necessities of his situation, and of the consequences of a different line of action, are correct or not; but if such be the deliberate opinion of an undoubtedly able, prudent and conscientious man,—of a person whose successful administration of Manitoba has been rewarded by promotion to a more important post—I do not think it is competent for us to go behind it, or to act upon a different assumption.

34. The legal, or rather constitutional, question then arises, to what extent is the Crown of England committed by the acts and declarations of its Lieutenant?—those acts and declarations never having been disavowed or repudiated by the central authority of the Dominion, or by the representative of the Home Government. Although my experience in such matters does not enable me to speak with any great authority, I confess I should have difficulty in convincing myself that after the Governor of a Province has put arms into the hands of a subject, and has invited him to risk his life—for that, of course, is the implied contingency, in defence of Her Majesty's crown and dignity, and for the protection of her territory,—with a full knowledge at the time that the individual in question was amenable to the law for crimes previously committed,—the Executive is any longer in a position to pursue the person thus dealt with as a felon. The acceptance of the service might be held, I imagine, to bar the prosecution of the offender; for, undesirable as it may be that a great criminal should go unpunished, it would be still more pernicious that the Government of the country should show a want of fidelity to its engagements, or exhibit a narrow spirit in its interpretation of them. It is in this apprehension that I have ventured to call especial attention to this last of the pleas for "amnesty."

35. I must ask your Lordship to remember that in the foregoing brief observations, I have attempted to deal with but a few of the facts and incidents displayed in the evidence; neither do I pretend to have reproduced with anything approaching completeness the various arguments which either have been or may be adduced in support of the conflicting views of the contending parties. But my shortcomings in this respect will be more than supplied by the materials collected in the accompanying Blue Book, where each individual in any way implicated in these transactions has had an opportunity of explaining his conduct and enforcing his opinions. My only object has been to save your Lordship trouble by a preliminary co-ordination of the elements of the controversy. In order, however, that the defence may not lack all the assistance to which it may be legitimately entitled, I have thought it right to enclose two very able papers marked A and B, which have been framed for the purpose of embodying within a short compass the views of those who have convinced themselves that the

various circumstances referred to require the issue of an amnesty.

35. I have further the honor to append a petition addressed to me by the Catholic Archbishop and Bishops of the Province of Quebec, drawn up in the same sense. Vide
Enclosure
No. 2.

37. Perhaps my duty as regards the matter in hand will not be altogether completed unless I transmit to your Lordship some idea of the general view taken of this question by the population at large. With regard to the French section of Her Majesty's subjects, I may say that although there are probably few of them who do not regard the death of Scott as a regrettable event, they are united to a man in the opinion that the part played by Riel in the North West was that of a brave and spirited patriot; that it is principally to him and to those who acted with him that Manitoba owes her present privileges of self-government and her parity of rank and standing with her sister Provinces. They are equally convinced that the Government of Canada and of Her Majesty are bound by the promises of the Archbishop, and that the government Riel established at Red River was authoritative and legitimate; nor do I think will they ever be persuaded that the language held by Sir George Cartier did not imply a direct and explicit assurance of immunity to the murderers of Scott, on their submission to the new order of things established under the auspices of the Manitoba Act, and by the advent of Lieutenant Governor Archibald at Fort Garry.

38. On the other hand, a considerable portion of the people of Ontario resent the notion that a Catholic Archbishop should have usurped a plenary power of pardon in respect of men who had so cruelly put to death an innocent fellow countryman of their own. They regard Riel as a disloyal rebel, as well as a murderer, and they would look upon the escape either of him or of Lepine from punishment as an almost intolerable miscarriage of justice. At the same time the larger proportion of them feel that various circumstances have occurred to complicate the situation, and to render the Capital Sentence impossible of execution, and even amongst the more extreme section of those who are animated by sentiments of intense sympathy for Scott, there is to be observed, as far as I can judge from the newspapers, a moderation and reasonableness which does them considerable credit.

39. It only remains for me to add that even should it be decided that the obligations imposed upon us by the procedure of Lieutenant Governor Archibald are less compromising than I am inclined to consider them, and that the Crown is quite untrammelled in its action, I still think that the various circumstances I have referred to in this despatch, require the capital sentence of Lepine to be commuted by the clemency of Her Majesty into a much milder punishment. This commutation, when the proper time arrives, I propose to order on my own responsibility, under the powers accorded to me by my instructions.

40. On the other hand, I feel very strongly that it would shock the public sense of justice were Riel to be visited with a lesser penalty than his associate. In the estimation of all those who consider the killing of Scott a crime, Riel is held to be the principal culprit, and as a matter of fact, whatever promises were made by Lieutenant Governor Archibald to Riel were also extended to Lepine. If, therefore, the latter is required to undergo a term of imprisonment, it appears to me that the Executive will

be precluded from exercising any clemency towards Riel, until he shall have surrendered himself to justice, and, on conviction, have submitted to a similar penalty.

I have, &c.,

(Signed), DUFFERIN.

The Right Honorable
The Earl of Carnarvon,
&c., &c., &c.

ENCLOSURE No. 1.

COPY of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 4th day of December, 1874.

The Committee of Council have had under consideration the questions which arose from the troubles in our North-West territories in 1869 and 1870, prior to the annexation of that country to the Dominion, which have disturbed the public mind so much from that time to the present. It is exceedingly desirable to reach a permanent settlement as soon as possible, which will set at rest the existing agitation concerning the granting or withholding of an amnesty for the offences committed in that country during the insurrection.

The difficulties which stood in the way of the Dominion Government endeavoring to close the controversy by using its utmost authority to punish or pardon, and in June, 1873, asking the interposition of Imperial authority to deal with a question upon which there is so serious a division of opinion in Canada, still exist, if indeed they have not been aggravated by subsequent events.

During the last session of the Dominion Parliament, the House of Commons appointed a select committee to inquire into the causes of the insurrection, and also to what extent promises were made to the actors therein of a full amnesty for the political offences there committed by any persons holding official positions.

The publication of the report of this committee has placed the public in possession of all the evidence that could be collected bearing upon the question of amnesty, as well as the correspondence of the insurgents and their friends with the Government, and the relations of Riel and his chief associates with the Local and Dominion Governments subsequent to the quelling of the insurrection.

The Government of the Dominion, in a minute of Council dated June 4th, 1873, requested Your Excellency to bring the matter before Her Majesty's Government, in order that such course might be taken as might be consistent with the interests of justice and best for the quiet of the country.

The Right Honorable Lord Kimberley, Secretary of State for the Colonies, in his despatch of July 24th, 1873, in reply to the minute referred

to, expressed the willingness of Her Majesty's Government to take upon themselves the responsibility of dealing with the question of amnesty.

The reasons which then made a reference of the question to Her Majesty's Government desirable, have been intensified by later events. The Committee of Council therefore respectfully request that Your Excellency may be pleased to bring the subject again under the notice of the Imperial Government, and convey the desire of this Government that they will now deal with the whole matter in such a way as existing circumstances may seem to justify. The Committee also recommend that Your Excellency may forward with this minute a copy of the Report of the Select Committee of the House of Commons, for the information of Her Majesty's Government.

(Certified),

WM. LEMS WORTH, JR.
CLERK PRIVY COUNCIL.

ENCLOSURE No. 2.

A Son Excellence le Comte de DUFFERIN, Gouverneur-Général, etc.,
etc., etc.

L'honorable requête des soussignés, Archevêque et Evêques Catholiques de la Province de Québec, représente humblement à votre Excellence,—

Qu'ils ont appris avec chagrin l'état de trouble où se trouve maintenant la Province de Manitoba et qu'ils craignent que cet état ne s'aggrave si l'on n'y apporte un prompt remède.

Que ce remède ne peut être qu'une amnistie pleine et entière en faveur de tous les habitants de la dite Province, pour tout crime ou délit commis à l'occasion des troubles politiques qui ont eu lieu antérieurement à la mise en force de l'Acte dit de Manitoba.

Qu'on ne peut se dissimuler que cette amnistie n'ait été promise de la manière la plus formelle par le Gouvernement, en 1870, lorsqu'il députa Monseigneur A. Taché, Archevêque de St. Boniface, auprès de son peuple pour l'engager à se soumettre au nouvel ordre de choses réglé par le Gouvernement Impérial.

Qu'il est certain que ce digne Prélat, que l'on avait prié instamment de venir pour cela de Rome, eût refusé de se charger d'une pareille mission s'il eût pu prévoir qu'on mettrait en doute la validité des promesses qu'on l'avait chargé de faire ou que du moins il eût exigé qu'on lui donnât un document qui le mit à l'abri de la responsabilité dont il allait se charger vis-à-vis de son peuple.

Que les soussignés ressentent vivement la situation compromettante où se trouve leur digne collègue par suite de l'inexécution des promesses que le Gouvernement lui avait faites, et que, si on ne s'empresse de la faire cesser, il serait difficile de conserver entre le Gouvernement et les chefs de l'Eglise Catholique en Canada, cette confiance mutuelle qui a contribué efficacement jusqu'à ce jour à faire régner la paix et la bonne harmonie dans la Puissance.

Que la dite amnistie ayant été promise sans limites doit être accordée comme telle pour mettre fin à l'irritation causée par le résultat du procès Lépine, non-seulement dans la dite Province de Manitoba, mais encore dans les autres parties de la Puissance, qu'elle est nécessaire pour mettre fin à des discussions dangereuses qui troublent la paix et retardent la prospérité générale.

C'est pourquoi les soussignés prient Votre Excellence de vouloir bien prendre leur requête en considération, et user de la juste influence dont Elle jouit auprès du Gouvernement Impérial, pour obtenir que l'amnistie promise soit proclamée au plus tôt et qu'il soit mis fin à l'agitation et à l'inquiétude qui règne à ce sujet parmi les loyaux sujets de Sa Majesté, dans la Puissance du Canada.

† E. A., Arch. de Québec,
† IG., Ev. de Montréal,
† C., Ev. de St. Hyacinthe,
† L. F., Ev. de Trois-Rivières,
† JEAN, Ev. de S. G. de Rimouski,
† E. C., Ev. de Gratianopolis,
† A., Ev. de Sherbrooke,
† J. THOMAS, Ev. d'Ottawa

Province de Québec,

Novembre, 1874.

ENCLOSURE A.

MEMORANDUM ON REPORT OF THE SELECT COMMITTEE TO ENQUIRE INTO THE CAUSES OF THE DIFFICULTIES IN THE NORTH-WEST TERRITORY IN 1869-70.

The evidence taken before the Select Committee to enquire into the causes of the difficulties in the North-West Territory in 1869-70, contains important revelations.

The principal, and it may be said the sole point of interest in that enquiry, was to ascertain whether or not a general amnesty had been promised to the parties implicated in those difficulties—by whom, and under what authority it was promised.

The troubles in the North-West broke out unexpectedly. They are mainly attributable to the hasty and inconsiderate manner in which surveys were entered upon by Dominion officials, of lands which the *half-breeds* considered theirs: to the fact that a transfer was made by the Hudson Bay Company, and a Lieutenant-Governor appointed, without any notice to or consideration for the people of the territory. The opposition, which might easily have been satisfied by slight guarantee, became intensified by the haughty conduct of Mr. McDougall, which brought about an open and armed resistance to the Dominion authorities.

On the first intimation of those troubles, the Dominion Government summoned Archbishop Taché, then at Rome, who, on his arrival, was requested by Sir John Young, then Governor-General, on behalf of the Imperial authorities, and by the Canadian Government, to proceed to the North-West, and use every effort to pacify the country. His instructions were most general in their character, and his course of action left almost entirely to his own judgment and discretion.

On the 16th of February, 1870, the Governor General wrote to the Archbishop:—
 “ Lord Granville was anxious to avail himself of your valuable assistance from the out-set, and I am heartily glad that you have proved willing to afford it so promptly and so generously. You are fully in possession of the views of my Government; and the Imperial Government, as I informed you, is earnest in the desire to see the North-West Territory united to the Dominion on equitable conditions.” —“ I need not attempt to furnish you with any instructions for your guidance, beyond those contained in the telegraphic message sent to me by Lord Granville on the part of the British Cabinet, in the Proclamation (that of the 6th December, 1869) which I drew up in accordance with that message, and in the letters which I addressed to Governor McTavish, your Vicar-General, and Mr. Smith.
 “ In declaring the desire and determination of Her Majesty's Cabinet, you may safely use the terms of the old formula: *that right shall be done in all cases.*”

The proclamation referred to contained the following passage:—“ And I do lastly inform you that in case of your immediate and peaceable obedience and dispersion, I shall order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law.”

On the same day, 16th February, Sir John A. Macdonald wrote to Archbishop Taché: “ Should the question arise as to the consumption of the stores or goods belonging to the Hudson Bay Company by the insurgents, you are authorized to inform the leaders that if the Company's Government is restored, they will be *be a general amnesty granted*, but in case the Company should claim the payment for such stores, that the Canadian Government will stand between the insurgents and all harm.”

The Archbishop was furnished with a copy of the proclamation and left, having acquired the conviction from conversations with Sir John A. Macdonald, that whatever might take place, he was authorized to publish the proclamation or not, as he thought proper, according to circumstances, and that it would cover everything done to the day of its publication. Sir John A. Macdonald, giving a different interpretation

to the proclamation, admits that he did not tell the Archbishop to issue the proclamation if other crimes were committed in the interval between his departure and his reaching the territory.

Archbishop Taché arrived in the territory on the 9th of March, 1870, five days after the death of Scott. The excitement was great and "*he was speedily convinced that the situation was extremely perilous,*" and that every possible precaution should be taken to conciliate all interests at stake.

On the 11th of March, 1870, the Archbishop met Riel, Lepine, O'Donoghue, and others, and promised them an amnesty in the name of the Governor General, in accordance with his proclamation, and assured them it would apply to everything done till then, being satisfied that unless such promise was made they would resist the Canadian party, and that the country would certainly be ruined.

On the 9th of June following, Archbishop Taché, seeing the uneasiness of the people, owing to their ignorance as to the granting of a complete amnesty, the plans suggested to resist the troops, and in order to avert the danger to which they in the North-West were exposed, gave his word of honor, in the name of the Canadian Government, that a complete and entire amnesty (if not already bestowed) would be granted before the arrival of the troops. He immediately wrote to Mr. Howe, the then Secretary of State, to inform him of what he had done. On the fourth of July Mr. Howe acknowledged the letter of Archbishop Taché, and reminded him that in the debate on the Manitoba Bill Ministers had declared that Canada had no power to grant an amnesty, and that the exercise of the prerogative of mercy rested solely with Her Majesty; that Father Ritchot and Mr. Scott had been distinctly informed that the Dominion Government had no power as a Government to grant an amnesty, and, "*I would add,*" says Mr. Howe, "*that the Government is not in a position to interfere with the free action of Her Majesty in the exercise of the royal clemency.*"

Her Majesty's Imperial Ministers can alone advise the Queen on such an important matter, when called upon to do so. No doubt can be entertained that Her Majesty, advised by Her Ministers, will on a calm review of all the circumstances discharge the duty of this high responsibility in a temperate and judicial spirit.

"The foregoing explanations are given to Your Lordship in order that it may be well understood that the responsibility of the assurance given by Your Lordship of a complete amnesty, cannot in any way attach itself to the Canadian Government.

"The conversation to which Your Lordship alludes as having taken place between Your Lordship and some Members of the Canadian Cabinet, when Your Lordship was in Ottawa about the middle of the month of February last, must necessarily have taken place with reference to the proclamation issued by His Excellency the Governor General, on the 6th December last, by command of Her Majesty, in which His Excellency announced that in case of their immediate and peaceable dispersion, he would order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law at Red River.

"Though I have felt it my duty to be thus explicit in dealing with the principal subject of your letter, *I trust I need not assure you that your zealous and valuable exertions to calm the public mind in the North-West are duly appreciated here, and I am confident that when you regard the obstructions which have been interposed to the adoption of a liberal and enlightened policy for Manitoba, you will not be disposed to relax your exertions until that policy is formally established.*"

On the 5th of July, Sir George Cartier wrote to Bishop Taché a long letter marked strictly private and confidential, in which he gives as a reason for not answering his letters, that he was afraid the answer might be intercepted and that he has trusted to good Father Ritchot to tell him in person what he did not like to put on paper.

He speaks of the delicate question of amnesty, that happily for the people of Red River, the question of amnesty rests with Her Majesty, and not with the Canadian Government. He refers to the petition of Father Ritchot to the Queen, and of the interviews Father Ritchot had with Sir John Young. Then he adds, "*but it is, I repeat, fortunate that it is Her Majesty, aided by the advice of Her Ministers, who*"

"will have to decide this question. Her Majesty has already by proclamation of the 6th of December last, which she caused to be issued by Sir John Young, so to *“speak promised an amnesty.”*

After recommending that a hearty welcome be offered to Mr. Archibald, who was going to the North-West as Lieutenant-Governor, and to the military expedition; he adds, "The Queen will perhaps wait for the result before making known Her clemency;" and again, "if it should happen that opposition were offered on the arrival of the troops and of the new Governor, those taking part in it would incur the risk of finding themselves excluded from the amnesty Her Majesty may have in view; and which she will sooner or later make known."

This was written while Sir George Cartier acted as leader of the Government, during the illness of Sir John A. Macdonald, and for the evident purpose of showing that the letter of the 4th of July was to quiet the fears of some of his colleagues, and for no other purpose.

Archbishop Taché further states, that in a subsequent interview, in July, 1870, Sir George assured him that the amnesty would be proclaimed, that nothing had been changed, and that the proclamation was expected any day.

The Archbishop also states that on several occasions he wrote to Sir George Cartier and to Sir John A. Macdonald, strongly asserting that an amnesty had been promised, without it being denied by them.

It will be observed that the letter of the 4th of July contains no disallowance, either on the part of the Governor General or of his Cabinet, of the action of the Archbishop; no repudiation of the promises made; no request to inform the parties to whom they were made that they need not reckon on those promises; and no revocation of his authority. On the contrary he is told that *his zealous and valuable exertions to calm the public mind in the North-West are duly appreciated, and he is invited not to relax those exertions until a liberal and enlightened policy is formally established.*

In fact, while the Government endeavor to throw on their agent the responsibility of the course of action he has taken, they nevertheless approve of what he has done; invite him to persist, and they continue him in his confidential and delicate mission. This approval is made more apparent by comparing Mr. Howe's letter, which was official, with that of Sir George Cartier's of the 5th of July, which was *strictly private and confidential*. The first one for the public, and the other for Monseigneur Taché alone. No person can rise from a perusal of those two letters without being satisfied that the conduct of the Archbishop was fully approved of by the Government, who shrunk from a public expression of their approval.

That Archbishop Taché, acting under the instructions received at Ottawa, when he was entrusted with the proclamation of the Governor General, of the 5th December, for publication on his arrival in the territory, and under the letter Sir John A. Macdonald handed to him, both of which documents contained a direct promise of amnesty, did promise an amnesty, is not contested. But it is contended that the authority to promise an amnesty did not extend to acts subsequent to the 16th of February, 1870, the date of the instructions, and could only cover offences similar to those mentioned in the proclamation, and could not apply to such a crime as the murder of Scott.

The instructions to Archbishop Taché were to publish the proclamation, if he thought proper, when he reached the territory. The proclamation of amnesty contained in Sir John A. Macdonald's letter was also to be made when the Archbishop arrived at Red River. It is hardly necessary to say, that a proclamation takes effect not from the day it is prepared or dated, but from the day of its publication; and a promise from the day it is made, unless another date be specified. Now, it has been shown that no restriction was imposed upon Archbishop Taché, who was to exercise *his own discretion* to quiet public excitement.

It might perhaps be said, that the Archbishop finding on his arrival at Red River, that the condition of things was materially changed, should not have promised amnesty, but referred to the Imperial and Canadian authorities for further instructions. This, however, does not affect the question; whether or not, he acted within

the scope of his authority, but merely whether he used a wise discretion in acting as he did.

Both by the proclamation and by Sir John A. Macdonald's letter, a distinct promise of amnesty was made. The Archbishop was authorized to make that promise known when he arrived at Red River. He has done so; and whether it was wise or not, is a question to be decided by the necessity of the case. It is worthy of remark, that later on, as will be seen hereafter, Lieutenant-Governor Archibald, when placed in the same difficulty, took a similar course. That the promises so made by the Archbishop, and which procured the immediate release of the prisoners and the acceptance of the terms of the Manitoba Act, prevented civil war, and caused the recognition of the Canadian Government in the territory, are binding on those who gave the authority to make them, could not admit of a doubt, even if his course of action had not subsequently been approved by the subsequent action of the Government, as shown by the letters of the 4th and 5th July, 1870.

The next important portion of the evidence to be found in the report relates to the promises made to the North-West delegates.

Father Ritchot, Judge Black, and Mr. Alfred Scott were appointed at a meeting of delegates from the North-West people, and also by the Provisional Government, a deputation to discuss with the Canadian Government the terms of union. They were the bearers of the conditions on which the people of the North-West were willing to join the Confederation. These conditions, prepared and adopted at the meeting and by the Provisional Government, were called their "Bill of Rights," the 19th Article of which required a guarantee, "that none should be held liable or responsible with regard to the movement, or of any action which led to these negotiations."

From the 23rd of April to the 6th of May, 1870, the negotiations were carried on by the delegates, on the one hand, and on the other by Sir John A. Macdonald, and by Sir George Cartier, specially appointed to represent the Dominion Government. From the 6th of May to September, 1870, Sir John A. Macdonald being ill, was unable to attend to business; and the negotiations were carried on and completed by Sir George Cartier alone—Sir George being the most influential member, and virtually the leader of the Government during Sir John A. Macdonald's illness.

Father Ritchot contends that he and the other two members of the delegation were acknowledged and treated with as delegates from the Provisional Government, which is denied by Sir John A. Macdonald, who says they were received as delegates from the people of the North-West; but that it was known that they were also the delegates of the Provisional Government and bearers of the "Bill of Rights" prepared by the latter, is not contested. Nor is it contested that several articles of the Bill of Rights, including Article 19, were discussed.

Of the three delegates, Father Ritchot alone gave his evidence. Judge Black went to reside in Europe immediately after the negotiations were closed, and Alfred Scott is now dead.

Father Ritchot repeatedly asserts that, although during the negotiations the Canadian Ministers said that the granting of the amnesty, of which he and the other delegates made a *sine quâ non* of any arrangement, did not rest with Canada, they would find means to arrange the matter; that they were in a position to assure them that an amnesty would be granted immediately after the passing of the Manitoba Act, that they might trust to their word for it, that there would be no difficulty whatever about the amnesty, all which is as strongly denied by Sir John A. Macdonald.

However, on the 18th May, 1870, the negotiations being over, Father Ritchot writes to Sir George E. Cartier, and after drawing his attention to three different subjects, one of which is thus alluded to: "The questions raised by the 19th clause of our instructions are of the highest importance, I trust, Sir, and the past is my warrant for the future, that you will be able to secure us, before our departure, all the guarantees promised by Sir John and you in relation to these highly important questions."

The 19th article or clause referred to, it will be remembered, had mainly refer-

ence to the amnesty. On the next day, 14th of May, Sir George, before answering this letter, took Father Ritchot and Mr. Alfred Scott, two of the delegates, to Sir John Young, the then Governor General, and a long conference took place on the subject of amnesty. On the 23rd May, Sir George Cartier, answering the letter of Father Ritchot of the 18th, alludes to the question of amnesty. On the 23rd May, Sir George Cartier, answering the letter of Father Ritchot of the 18th, alludes to the question of amnesty and to the interview with the Governor General, as follows:

"I desire to call your attention to the interview you had with His Excellency the Governor General the 19th instant, at which I was present, and at which His Excellency was pleased to state the liberal policy which the Government proposed to follow in relation to the persons for whom you interest yourself, is correct, and which ought to be adopted."

This letter, it will be observed, not only does not deny the emphatic assertion of Father Ritchot, that Sir John A. Macdonald and Sir George E. Cartier had promised him guarantees in reference to the amnesty, but implicitly admits that such promises were made, and that the Governor General approved of their action.

The post-script authorizing Father Ritchot to use the letter in any explanation he may have to give, was, no doubt, intended to enable Father Ritchot to satisfy the people of the North-West, that their demands, including the amnesty, had been acquiesced in; otherwise the postscript could have no meaning.

Immediately after this, Sir George E. Cartier requested Father Ritchot, through Mr. J. C. Taché Deputy Minister of Agriculture, to sign a petition to the Queen, prepared at the instance of Sir George himself, and praying for an immediate amnesty.

Father Ritchot further says that in a subsequent interview Sir George Cartier told him that he had obtained all he wished for, that the amnesty would be proclaimed before the arrival of the Lieutenant-Governor in the Territory, and that *Sir George requested him "to tell Riel and his people that they had nothing to fear."*

From the moment Father Ritchot left Ottawa on the first day of June, he has not ceased to assume and assert, in his letters to Sir George Cartier, in his interviews with Riel and others, and with Archbishop Taché, in a second petition to the Queen, which he and Alfred Scott signed in May, 1872, as well as in the affidavits (p. 83), which he gave on the 19th November, 1873, that the amnesty had been promised and would be granted.

The statements of Father Ritchot are corroborated by the letters of Sir George Cartier, by his memorandum of the 8th of June, 1870 (p.p. 171 to 178); by the evidence of the Hon. Joseph Royal, who says Sir George Cartier told him that "the amnesty was settled upon"—to tell Riel of it (p.p. 129 and 130); by that of the Hon. M. A. Girard, to whom Sir George said "be sure that the amnesty will come before long,—tell your people to remain quiet and keep order" (p. 179); by that of Major Futvoye, who heard Sir George say to Father Ritchot, "I guarantee that you will have everything you have asked," and that he (Sir George) frequently told him (Mr. Futvoye) that he had promised the delegates that a general amnesty "should be granted for all past offences;" also by that of Benjamin Sulte, who says that in his presence Sir George Cartier "repeatedly assured Father Ritchot that the people would not be troubled in reference to what had taken place." Major Futvoye was the Deputy and Mr. Sulte the Private Secretary of Sir George Cartier.

Apart from this direct evidence, the enquiry made by the Committee has disclosed a series of facts of the highest interest, in their bearing on the question of amnesty.

Mr. Archibald was appointed Lieutenant-Governor of Manitoba, and was in the Province, in the beginning of September, 1870, some eight days after the arrival of the troops. Although he declares that he received no instructions as regards the amnesty, he never seems to have entertained any doubt that it was either promised by the Dominion Government, or implied in the Treaty.

This is shown by Mr. Royal's evidence, and by a letter which Mr. Archibald addressed to Mr. Smith, on the 20th of December, 1873, in which he says, "There is no

"doubt that a very short time would have been needed to bring about a better state of things, and then he and his friends (Riel and his friends) could have claimed an amnesty, which, *whether it was promised or not*, was implied in the Treaty; but which, whether promised or not, no Government could venture to give till the passions of the moment had cleared away a little, and left them free to act in the true interest of the Dominion."

These views are those that he took from the outset; for he says that on his arrival at Red River, September, 1870, he told the people and the Archbishop, that he had no instructions; and that he also stated to the Archbishop, that *his own impression was, that under all the circumstances of the case, the logical conclusion seemed to be, that there must be an amnesty.*

In October, 1871, the Province was menaced with a formidable Fenian invasion. Governor Archibald thought the situation so grave, that to repel this invasion required the united action of the whole population. He applied to Father Ritchot to secure the assistance of the French half-breeds. A correspondence took place, in which Father Ritchot represented that Riel's influence was necessary to direct his compatriots, but that he was in such a position, that he could not act openly, unless he received the assurance that he would be sheltered from any legal proceedings, *at least for the present.*

To this request Governor Archibald replied—

"You speak of the difficulties which might impede any action of Mr. Riel, in coming forward to use his influence with his fellow-citizens, to rally to the support of the Crown, in the present emergency."

"Should Mr. Riel come forward, as suggested, he need be under no apprehension that his liberty will be interfered with in any way. To use your own language, *pour la circonstance actuelle.*"

Riel came forward as requested, and organized two or three hundred half-breeds. He, together with Lepine and Parenteau, wrote to the Governor that they had organized several companies, and others were being organized, and that so long as their services were required, he might rely upon them.

On the 8th of October, the Governor crossed the river to meet them. He shook hands with Riel, Lepine and others, and returned them his thanks, through his secretary, Mr. Buchanan, for their loyalty and prompt action, by a letter of the 8th October, addressed to Riel, Lepine and Parenteau. In his evidence, Governor Archibald explains, as follows, the reasons which justifies his course of action:

"I believe (he says), that the action of the half-breeds, at the time of the Fenian raid, was attributable to the negotiations with their leaders which I have described; and if the half-breeds had taken a different course, I do not believe the Province would now be in our possession. I think I communicated those circumstances to the Government at Ottawa.".....

"But I did not receive any communication from that Government as to the mode of action adopted or to be adopted."

In these difficult circumstances he was left without other instructions than those he had received at Ottawa from Sir George Cartier, who said to him:—"You must exercise your best judgment, and do what you can to preserve the public peace; we have implicit faith in your discretion and good sense."

In a confidential letter of the 9th October, 1871, Governor Archibald reported without delay to Sir John A. Macdonald the promise he had made—"that *pour la circonstance actuelle* the leaders of 1869 and 1870 would not be arrested."

This letter was acknowledged on the 18th October by Sir John A. Macdonald, who did not express a word of disapprobation at the course pursued or the promises made to the leaders.

Governor Archibald, later on, after he had ample time for reflection, says:—

"On looking back, I see nothing in the course I took that gives me any doubt as to its correctness. I would take it again under the like circumstances. If the Dominion have at this moment a Province to defend, and not one to conquer, they owe it to the policy of forbearance."

These several acts of the Lieutenant-Governor, in soliciting the aid of Riel and others at a time of great danger for the safety of the country; his associating with them, and thanking them for their services, to say nothing of the direct promise to free them from the present from arrest, constitute, under the circumstances, and according to every rule of public and international law, an absolute and unconditional promise of amnesty for all the offences of which Riel and his companions might then have been charged with. The words *pour la circonstance actuelle*, used by the Governor, can in no wise limit the extent of this mercy, for pardon on the one day cannot mean trial on the next day for the same offence.

The Dominion Government, under whose authority the Lieutenant Governor was acting, could only have been relieved from the consequences of the obligations implied in his dealing with the leaders of 1869 and 1870, by an immediate disallowance of his acts and repeal of his authority. Far from this being done, his course was approved by a promotion to the important office of Lieutenant-Governor of Nova Scotia, which position he now holds.

Subsequent events show to what extent the Dominion Government felt the responsibility of the obligations which either of their own promises or the acts of the agents imposed upon them, for within a month of the occurrences just alluded to, and when all apprehensions of danger from a Fenian invasion were over, Sir George E. Cartier and Sir John A. Macdonald are found pressing Archbishop Taché to use his influence in getting Riel to leave the country *for awhile*. "If you can succeed in keeping him out of the way, I will make his case mine, and I will carry the point," says Sir John A. Macdonald. He agrees to pay money to keep him out of the country, and sends a draft of \$1000 to Archbishop Taché, with instructions to pay the money periodically, and spread it over a year to prevent waste, and the embarrassment caused by his presence in the country from recurring.

On his way home, Archbishop Taché was informed by a letter from Sir George, that it would be advisable that Lepine should also leave the country, and the money furnished by Sir John be divided between him and Riel.

After reaching Red River the Archbishop found that the sum furnished was insufficient. He applied to Lieutenant-Governor Archibald, who called on Mr. Smith, and the latter, at the request of the Lieutenant-Governor, advanced, out of the funds of the Hudson Bay Company, a sum of £600 0s. 0d. sterling, to be repaid by the Dominion Government. Part of this sum, and of the \$1000 furnished by Sir John, was handed to Riel and Lepine, who left the country accompanied by one or two men of the Dominion Police, sent by Plainval, the Chief of Police, to protect them from danger.

Archbishop Taché says the reason assigned both by Sir John A. Macdonald and Sir George E. Cartier for their request to send Riel out of the country, was to prevent the excitement which his presence in Manitoba would make during the elections.

Sir John A. Macdonald says his reason for sending Riel away, was the fear of a renewed Fenian invasion, and the information the Government had that both Riel and Lepine, although professing to act against the Fenian movement, were really in concert with its bodies. If the Government had such information, the proper place the police should have taken Riel and Lepine to was the common gaol, where they might have atoned for past offences and prevented from doing further mischief, instead of accompanying them to the frontier, where they would meet their confederates and mature with impunity their treasonable projects. Governor Archibald emphatically denies that there was any danger of a second Fenian invasion, and states that he satisfied himself of the loyalty of Riel, about which he had doubts. His reason for desiring them away was the fear that if an attempt was made to arrest them, the whites, who looked upon them as *patriots and leaders*, might rise to rescue them, and thereby endanger the peace of the country. Mr. Smith seems also to have shared that opinion.

Be that as it may, the fact remains that the First Minister of the Dominion has used Civil Service money for the purpose of secreting from justice and preventing the trial of one who was accused of treason and murder. If this was not done in part fulfilment of an engagement on behalf of the Government to pardon the offence of

which Riel was accused, then it was a deliberate conspiracy to bar the course of public justice; it was simply an act of compounding, and, along with this aggravated circumstance, that it was not the felon who paid the accuser to secure impunity, but the accuser, the public prosecutor, who furnished, out of the public chest, the funds required for that purpose. This would be such a monstrous proceeding, that it cannot be supposed to have been entertained for an instance by one who, in addition to being First Minister, held the office of Minister of Justice. The transaction just alluded to furnishes another and perhaps stronger evidence than all the others which have been adduced, that the Government felt bound to secure the amnesty to Riel and others, and that they sought, by these means, to fulfil in spirit these engagements, which later, at a more convenient time, they expected to be able to carry to their full extent.

It will perhaps be contended that the promise of amnesty, made by the Canadian authorities, are of no value, since they had no right to grant it. The answer to that is, that the Dominion Government, or their representatives, did not promise to grant an amnesty, but to secure it. This promise implies, that they would use every means in their power to obtain it. After representing the whole case to the Imperial Government, and showing that these promises were made in pursuance of instructions received from the Colonial Secretary, to use every means to restore order and peace in the North-West Territory; and that those promises were considered by the confidential agents who made them, as the only mode of fulfilling their mission; and that the course they have thought necessary to adopt under a sense of the gravest responsibility, has saved that immense territory from the horrors of a civil and Indian war, and has preserved it to the British Crown; it is not to be supposed that when these representations shall have been made, coupled with an earnest appeal for amnesty, which is now desired by the bulk of those most interested in the peace, welfare and prosperity of that important part of the Dominion, that promises made under such circumstances, and with such results, will be discarded; but whether they are or not, the Canadian Government will then, and not till then, be able to claim to have discharged its obligations towards those who made such promises on its behalf, as well as to those to whom they were made.

ENCLOSURE B.

NORTH-WEST QUESTION.

In order to consider in its true light the question of amnesty to Riel and the other leaders implicated in the North-West troubles during the years 1869 and 1870, as it now stands, we have not to examine whether Riel and his confederates committed acts which call for the condemnation of every loyal subject, but whether, according to the law of nations, those parties are entitled to a general amnesty for all the deeds by them perpetrated during those troubles, as insurgents and rebels to the authority of the Queen.

To that end, many things and facts have to be taken into consideration:—

During the rebellion, at the time when the insurgents were under arms and in possession of Fort Garry, and controlled and were ruling the country, Archbishop Taché, who was engaged in Rome at the Œcumenical Council, was called, and induced to proceed to the North-West as envoy and plenipotentiary of Her Majesty's Government, and there to do all in his power to bring the insurgents to submission. For that purpose, he was vested with the powers and authority contained in the letter of the then Governor General of Canada, Sir John Young, dated the 16th February, 1870, of which follows an extract:—

"You are fully in possession of the views of my Government, and the Imperial Government, as I informed you, is earnest in the desire to see the North-West Territory united to the Dominion on equitable conditions. I need not attempt to furnish you with any instructions for your guidance, beyond those contained in the telegraphic message sent me by Lord Granville, on the part of the British Cabinet, in the Proclamation" (dated 6th December, 1869) "which I drew up in accordance with that message, &c."

In the above mentioned Proclamation, after other recitals, Sir John Young, addressing the people of the North-West Territory, says:—"And I do lastly inform you in the case of your immediate and peaceable obedience and dispersion, I shall order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law."

His Lordship was furthermore given a letter from Sir John A. Macdonald, Prime Minister and Minister of Justice, dated the 16th February, 1870, of which the following is an extract:—

"Should the question arise as to the consumption of any stores of goods belonging to the Hudson Bay Company by the insurgents, you are authorized to inform the leaders that, if the Company's Government is restored, not only will there be a general amnesty granted, but in case the Company should claim the payment for such stores, that the Canadian Government will stand between the Insurgents and all harm."

Empowered by these credentials, and by the verbal instructions given him both by the Governor General and by Sir John A. Macdonald and Sir Geo. E. Cartier, in the name of the Canadian Government, the Archbishop left for the North-West, where he arrived in the first days of March, a few days after the death of Scott. He immediately communicated to the leaders of the insurgents his credentials, namely, Sir John Young's letter and proclamation, and Sir John's letter dated the 16th February. They were then in possession of the whole territory, and had organized what they called a Provisional Government and Legislature, through a popular election in the various French and English parishes in the territory.

After having remonstrated with them, His Lordship, in the name of the Governor General of Canada, made them several promises if they would lay down arms and submit to the Canadian authority; and more particularly promised a general amnesty to all parties implicated in the insurrection; for what they had done as insurgents up to that time, including the shooting of Scott.

Relying on a promise thus made by a man of such a standing as Archbishop Taché, on the authority of the credentials he exhibited to them, and on the verbal

instructions he told them he had received on leaving Ottawa, the insurgents determined to submit to Canadian authority, declaring at the same time they had never intended to break their allegiance to the Crown, but that they would not be forced into the Canadian Confederation without being consulted and without being granted the same rights and privileges as were enjoyed by other portions of the Dominion. His Lordship answered that the Government of Canada were ready to consider their propositions, and that they had only to send delegates to Ottawa to agree upon the terms of their entering the Union; and he stated to them that if they did so *they would be amnestied from the first to the last, and he promised so in the name of Her Majesty.*

The insurgents yielded to his entreaties, and sent delegates to Ottawa with written instructions, wherein the granting of a general amnesty, as promised by Archbishop Taché, envoy and representative of the Government of Canada, was made the *sine qua non*.

The delegates were received as the delegates of the people of the North-West, and had several interviews with Sir John A. Macdonald and Sir Geo. E. Cartier, who had been specially authorized by the Government to confer with them on the subject of their mission. They communicated to those Ministers the instructions given to them by those who had sent them. After several interviews, an agreement was made, and resolutions adopted which were embodied in the Manitoba Act.

Delegates Ritchot and Scott state in their evidence that, as a general amnesty was the *sine qua non* of the understanding, it was promised both by Sir John and Sir George.

After the Manitoba Act was passed, the delegates returned home and stated to the leaders that a general amnesty had been agreed to as promised by Archbishop Taché, and would be granted.

Before leaving, Father Ritchot, one of the delegates, fearing that the leaders of the insurgents would yet entertain doubts as to the execution of the promise of amnesty, wrote to Sir George E. Cartier a letter in which he said:—"The questions raised by the 19th clause of our instructions" (that clause was the one relating to the granting of the amnesty) "are of the highest importance; I trust, sir, and the past is my warrant for the future, that you will be able to secure us, before our departure, all the guarantees promised by Sir John and you in relation to those highly important questions."

On receiving that letter, Sir George E. Cartier went to Messrs. Ritchot and Scott, two of the delegates, and took them to His Excellency the Governor General, where the question was discussed, and the next day he sent the following answer to Mr. Ritchot's letter:—"I desire to call your attention to the interview you had with His Excellency the Governor General, at which I was present, and in which His Excellency was pleased to state that the *liberal policy* which the Government proposed to follow in relation to the persons for whom you interest yourself is correct, and is that which ought to be adopted."

At an interview with Sir George, before their departure, the delegates Ritchot and Scott (Mr. Black had left for Scotland), asked him who was to govern the country until the arrival of the Canadian authorities. He told them that Riel should do it.

When these two delegates reached Fort Garry, they reported to Riel and his friends, the leaders of the insurgents, what had been done; they told them that the condition of a general amnesty had been agreed to, as promised by Archbishop Taché, and that it would be proclaimed under Her Majesty's own signature, within the strict delays necessary to get it from England. They added that up to the arrival of the Canadian authorities, Riel and his Provisional Government should "keep power and maintain order." The insurgents, confident in those declarations, kept possession of Fort Garry up to the arrival of the troops sent by the Canadian Government, and then immediately dispersed and laid down arms as agreed to.

It is maintained by certain people that, notwithstanding all the above and other evidence to be found in the Blue Book, there is no proof that an amnesty has been promised to all parties having taken part in the North-West insurrection, for all the

deeds perpetrated by them as insurgents. Let us examine by comparing the evidence, the value of such an opinion.

On the one hand, we have the following authorities:

1°. Archbishop Taché states he said to Sir John A. Macdonald, before leaving for the North-West: "This is all very well, but there have been acts committed which are blameworthy, and there may be some other before my arrival there: may I promise them an amnesty?" He answered me: "Yes, you may promise it to them." It was then that Sir John A. Macdonald wrote me the letter dated "16th Feb'y, 1870."

2°. Father Ritchot says that, when he arrived at Ottawa as a delegate, "The Ministers said in reply to our question, that they were in a position to assure us that an amnesty would be granted immediately after the passing of the Manitoba Bill."

3°. Alfred A. Scott says, in his petition to Her Majesty:

"That on the day and at the hour appointed, the negotiations were opened and that the delegates of the North-West declared to the Honorable Members of the Cabinet of Ottawa, that in conformity with their instructions, they could not come to any agreement unless a general amnesty should be granted for the illegal acts which might have been committed by any of the parties concerned in the troubles that had occasioned the actual delegation."

"That the Honorable Sir John A. Macdonald and Sir George E. Cartier declared to the delegates that they were in a position to assure them that such was the intention of Your Majesty; that they could consequently proceed with the negotiations, being satisfied that the Royal Prerogative of mercy would be exercised by the grant of a general amnesty."

4°. Hon. Joseph Royal says:

"In the interview referred to, I said to Sir George, I intended to go to Manitoba if the amnesty is to be proclaimed.

"He advised me very strongly to go, for several reasons. He enquired if I had seen Riel. He told me to tell Riel, and write to him, *L'amnestie est une affaire décidée, c'est une affaire faite.* He stated that it was a settled affair; that the thing was done."

"He expressly asked me to inform Riel of this, and to write to him if I could not see him."

5°. Hon. M. A. Girard says:

"As one of the Ministers of the Province, and feeling that it would be impossible to do much good in the Province without any amnesty, I wrote to Sir George Cartier, whom I regarded as one of my particular friends, on two or three different occasions, drawing his attention to that amnesty, and the promise that, under stood from the whole of the people, had been made of an amnesty. In these letters I described the condition of the country; and urged strongly upon Sir George the necessity for an amnesty.

"I received answers to several of these letters—I think to all of them. His answer was to request me to be sure that the amnesty would come. *Soyez certain que l'amnestie viendra avant long temps.* Tell your people to remain quiet and keep order.

"I wrote to Sir George as well in my capacity of a Minister as the sole representation of the French element; and also as friend. I have not those answers from Sir George here; they are at Winnipeg. In these letters to me he remarked also when recommending quiet, that the enemies of the people would be gratified if they put themselves in the wrong by acting otherwise, and so deprive themselves of the benefit of their position. He desired me to tell them to adhere to their duty and that the amnesty would inevitably come."

6°. Major Fuvôye says:

"I am Deputy of the Minister of Militia and Defence. I have filled that office since Confederation.

"I was present at a meeting between Sir George Cartier and Father Ritchot on

"19th May, 1870, or thereabouts, when Sir George told Father Ritchot this: *Je garantis que vous aurez tout ce que vous avez demandé.* I did not hear the conversation which had preceded this expression, nor was anything said afterwards during the same interview further. It was at the close of a long interview between them when I was called in and heard these words.

"Father Ritchot came from Sir George's direct into my room, which was almost adjoining, and told me that Sir George had guaranteed that an amnesty for all the past should be granted as soon as it could possibly be obtained.

"After Father Ritchot had left me I went into Sir George's room, when he told me that he had promised all that the delegates requested, and he hoped that everything was finally settled.

"He asked me if Father Ritchot was satisfied, and I told him that he assured me that the promises made by Sir George were quite satisfactory. This interview was early in the day, and, I presume, before any audience of the Governor on that day."

The six gentlemen all agree in their evidence that the amnesty was promised both by Sir John A. Macdonald and Sir Geo. E. Cartier, in the name of the Canadian Government.

On the other hand, we have the denial of the two latter gentlemen.

In order to properly appreciate this conflicting evidence as to the promise made to Archbishop Taché, before he left as delegate on behalf of Canada, and to Messrs. Ritchot and Scott, as delegates from people of the North-West, it must be borne in mind that at the time when the insurgents took arms and got possession of Fort Garry, there was great excitement. The Fenians had twice invaded our territory, and thereby caused a large amount of expenditure both in time and money. There was fear in England and here that we might be called to suffer a considerable loss in lives and in money; and perhaps be dragged into a war, not only with the Half-breeds, who were but few in number, but with the Indian tribes of the prairies, to which the insurgents were related by blood and language;—and with the Fenian organization, which was making every effort to raise trouble on this side of the American line. It was believed by everybody that if we once got into war with the people of the prairies, no one could foretell the end of it, on account of the immense extent of the North-West territories, and that we would be exposed to the same endless sacrifices which the United States had to suffer so many years, on account of the Indians of their Western Territory.

The Imperial Government itself, to a certain extent, shared this apprehension, since Sir Clinton Murdock was instructed to watch the proceedings on its behalf, and Lord Granville deemed it necessary to send the telegraphic despatch referred to by the Governor-General, &c., &c., &c.

Such being the general impression, and the Canadian Government being advised by the Imperial Authorities to make every effort towards the settlement of the difficulty, is it not most probable and likely that Archbishop Taché, when sent to the North-West, received the authority he was asking, and which every one concerned must have considered as essential for the success of his mission, namely, the power to promise the granting of an amnesty? That conclusion must also be arrived at if we consider the effect and extent of the general authority in the *carte blanche* given to him by the Governor-General's letter, and by that of Sir John A. Macdonald, dated the 16th February, 1870.

We have also the several letters of Sir Geo. E. Cartier, and his declarations to Messrs. Girard, Royal, Ritchot and Fûtvoje, all of which go to establish that the promise of amnesty had been made, and which fully corroborate the evidence of Archbishop Taché. Is it to be supposed that if the promise of an amnesty, as stated by Archbishop Taché, had not been made by Sir John A. Macdonald, that he would have submitted to the allegations contained in several of his Lordship's letters? that he would have given money for Riel and Lepine? that he would have approved Lieutenant-Governor Archibald and his minister, Mr. Girard, when they made the same promise? And when Mr. Archibald accepted Riel's services to repel the

Fenians, can we suppose that Sir John would have rewarded him by giving him a more important position than the one he then held, if Mr. Archibald had done so without Sir John's knowledge and consent? Decidedly no! To sum up, from the reasons, then existing, which would have induced any Government to do all in their power to put down that insurrection, and from Sir John's conduct from beginning to end, it is evident that, as alleged by Archbishop Taché and Messrs. Ritchot and Scott, the promise was duly made both before and at the time the delegates came here.

But now let us suppose for one moment that, when Archbishop Taché went to the North-West as the representative of Canada, he was not authorized by the Government of the day to make the promise he has made, would the question be changed?

The following facts are undeniable:

Archbishop Taché, as our plenipotentiary, and as representing the Governor and the Government of Canada, made to the insurgents the promise of a full and general amnesty, in the very terms mentioned in his evidence.

That promise was officially notified to the Canadian Government by his letters, bearing date the 11th March, 7th May, and 9th June, 1870.

He had never been disavowed or publicly disapproved, but on the contrary, he was thanked for having done what he had done.

For and in consideration of that promise of amnesty, the insurgents sent delegates to Ottawa, to whom the promise was renewed, at least by Sir Geo. E. Cartier who, together with Sir John A. Macdonald, had been empowered by the Cabinet to negotiate with those delegates, and who, in the absence and during the illness of Sir John, acted alone, and, as his Excellency Lord Dufferin says, as *locum tenens* of the Prime Minister.

The renewal of such promise by Sir Geo. E. Cartier was within the knowledge of Sir John A. Macdonald, for he says in his evidence: "In the conversations between Sir George and Father Ritchot, they were moving on different planes; Sir George, referring to the amnesty, exclusive of the persons charged with the death of Scott, and Father Ritchot always including them."

The leaders of the insurgents have executed their share of the agreement, and that which was the consequence of the promise of amnesty, and the Government have taken advantage of that promise and of its results.

According to the principles of International law, which applies as well to insurgents as to a foreign nation or power, the Government of Her Majesty is bound to fulfil the promise made to Archbishop Taché and grant a general amnesty, because it has taken advantage of the treaty made with Archbishop Taché, with or without proper authority. All the authors on International law, both French and English, concur in this.

Let us first refer to *Vattel* (Book II., Chap. XIV., S. 208): "If a public person, an ambassador, or a general of an army, exceeding the bounds of his commission, concluded a treaty or a convention without orders from the sovereign, or without being authorized to do it by virtue of his office, the treaty is null, as being made without sufficient powers: it cannot become valid without the express or tacit ratification of the sovereign. The express ratification is a written deed by which the sovereign approves the treaty and engages to observe it. The tacit ratification is implied by certain steps which the sovereign is justly presumed to take only in pursuance of the treaty, and which he could not be supposed to take without considering it as concluded and agreed upon."

And again, same book and chapter, s. 212: "We have shown that a State cannot be bound by an agreement made without her orders, and without her having granted any power for that purpose. But is she absolutely free from all obligation? That is the point which now remains for us to examine. If matters as yet continue in their original situation, the State or the sovereign may simply disavow the treaty, which is, of course, done away by such disavowal and becomes as perfect a nullity as if it had never existed. But the sovereign ought to make

"known his intentions as soon as the treaty comes to his knowledge; not, indeed, that his silence alone can give validity to a convention which the contracting parties have agreed to consider as valid without his approbation; but it would be a breach of good faith in him to suffer a sufficient time to elapse for the other party to execute, on his side, an agreement which he himself is determined not to ratify.

And further, Book III., Chap. XVIII., S. 291: "In many cases the safest, and at the same time, most just method of appeasing sedition, is to give the people satisfaction. And if there existed no reasons to justify the insurrection (a circumstance, which, perhaps, never happens), even in such a case, it becomes necessary, as we have above observed, to grant an amnesty where the offenders are numerous. When the amnesty is once published or accepted, all the past must be buried in oblivion; nor must any one be called to account for what has been done during the disturbances: and, in general, the sovereign, whose word ought ever to be sacred, is bound to the faithful observance of every promise he has made, even to rebels—I mean to such of his subjects as have revolted without reason or necessity. If his promises are not inviolable the rebels will have no security in treating with him: when they have once drawn the sword they must throw away the scabbard, as one of the ancients expresses it; and the prince, destitute of the more gentle and salutary means of appeasing the revolt, will have no other remaining expedient than that of utterly exterminating the insurgents. These will become formidable through despair; compassion will bestow succours on them, their party will increase, and the State will be in danger. What would have become of France if the leaguers had thought it unsafe to rely on the promises of Henry the Great? *The same reasons which should render the faith of promises inviolable and sacred between individual and individual, between sovereign and sovereign, between enemy and enemy, subsist in all their force between the sovereign and his insurgent or rebellious subjects.*"

Also Book V., ch. VI., Act 14:

"Upon a scrupulous fidelity in the observation of treaties, not merely in their letter, but in their spirit, obviously depends, under God, the peace of the world. *Pact a sanct servanda* is the prevailing maxim of International, as it was of Roman jurisprudence."

And again, *loc. cit.*, Art. 50:

"The consent may be signified in various ways. Some jurists have asserted that the declaration of consent must be specified in writing; but, though this be the usual and most convenient mode, it cannot be said to be indispensable to the validity of the Treaty."

Wheaton (Elements of International Law, Part III., S. 253) says:

"No particular form of words is essential to the conclusion and validity of a binding compact between nations. The mutual consent of the contracting parties may be given expressly or tacitly, and in the first case, either verbally or in writing. It may be expressed by an instrument signed by the plenipotentiaries of both parties, or by a declaration, and counter-declaration, or in the form of letters or notes exchanged between them. But modern usage required that verbal agreements should be as soon as possible, reduced to writing in order to avoid disputes; and all mere verbal communications, preceeding the final signature of a written convention, are considered as merged in the instrument itself. The consent of the parties may be given tacitly, in the case of an agreement made under an imperfect authority, by acting under it as if duly concluded."

Also *loc. cit.* s. 255: "Such acts or engagements, when made without authority, or exceeding the limits of the authority under which they purport to be made, are called *sponsions*. These conventions must be confirmed by express or tacit ratification. The former is given in positive terms, and with the usual forms; the latter is implied from the fact of acting under the agreement as if bound by its stipulations. Mere silence is not sufficient to infer a ratification by either party, in order to prevent the latter from carrying its own part of the agreement into effect. If, however, it has been totally or partially executed by either party, acting in good

"faith upon the supposition that the agent was duly authorized, the party thus acting is entitled to be indemnified or replaced in his former situation."

Also, Part IV., s. 399: "Grotius has devoted a whole chapter of his great work to prove, by the consenting testimony of all ages and nations, that good faith ought to be observed towards an enemy. And even Bynkershoek, who holds that every other sort of fraud may be practised towards him, prohibits perfidy, upon the ground that his character of enemy ceases by the compact with him so far as the terms of that compact extend. 'I allow of any kind of deceit,' says he, 'perfidy alone excepted, not because anything is unlawful against an enemy, but because when our faith has been pledged to him, so far as the promise extends he ceases to be an enemy.' Indeed, without this mitigation, the horrors of war would be indefinite in extent and interminable in duration. The usage of civilized nations has therefore introduced certain *commercium belli*, by which the violence of war may be allayed, so far as is consistent with its objects and purposes, and something of a pacific intercourse may be kept up, which may lead, in time, to an adjustment of differences; and ultimately to peace."

And again, *loc. cit.*, s. 544: "If an abstract right be in question between the parties, on which the treaty of peace is silent, it follows that all previous complaints and injury, arising under such claim, are thrown into oblivion by the amnesty, necessarily implied, if not expressed; but the claim itself is not thereby settled either one way or the other."

Woolsey (Introduction to the study of International Law, s. 107) says: "..... But Bynkershoek defended another opinion which is now the received one among the text-writers, and which Wheaton has advocated at large with great ability. If the minister has conformed at once to his ostensible powers and to his secret instructions, there is no doubt that in ordinary cases it would be bad faith in the sovereign not to add his ratification. But if the minister disobeys or transcends his instructions, the sovereign may refuse his sanction to the treaty without bad faith or ground of complaint on the other side. But even this violation of secret instructions would be no valid excuse for the sovereign's refusing to accept the treaty; if he should have given public credentials of a minute and specific character to his agent; for the evident intention in so doing would be to convey an impression to the other party that he is making a sincere declaration of the terms on which he is willing to treat."

Speaking of civil war, he says (s. 136): "The same rules of war are required in such a war as in any other—the same ways of fighting, the same treatment of prisoners, of combatants, of non-combatants and of private property by the army where it passes: so also natural justice demands the same veracity and faithfulness, which are binding in the intercourse of all moral beings."

"Nations thus treating rebels, by no means concede thereby that they form a State, or that they are *de facto* such. There is a difference between belligerents and belligerent States, which has been too much overlooked."

"When a war ends to the disadvantage of the insurgents, municipal law may clench the nail which war has driven, may hang, after legal process, instead of shooting, and confiscate the whole instead of plundering a part. But a wise and civilized nation will exercise only so much of this legal vengeance, as the interests of lasting order imperiously demand."

At s. 146, he says: "The possibility of intercourse in war depends on the confidence which the belligerents repose in each other's good faith, and this confidence, on the unchangeable sacredness of truth. Even Bynkershoek, who allows every kind of violence and every kind of craft, has to say, in words already cited, 'ego quidem omnem dolum permitto, sola perfidia excepta.' That faith should be kept with heretics has been denied, but no one has maintained that it is not to be kept with enemies."

"Such being the undoubted principle of obligation in war as well as in peace, war is enabled to put on a milder form, for that reason, and to interrupt its violence for a time, either towards particular persons or entirely." * * *

And again (s. 153): "The effect of a treaty on all grounds of complaint for which a war was undertaken, is to abandon them; or, in other words, all peace implies amnesty or oblivion of all past subjects of dispute, whether the same is expressly mentioned in the terms of the treaty or not. They cannot in good faith be revived again, although a repetition of the same acts may be a righteous ground of a new war. An abstract or general right, however, if passed over in a treaty, it not thereby waived."

Now, if the rules laid down by those writers are to be taken as law, as undoubtedly they are, because they are adopted by all writers on the subject, and more particularly because they are based upon justice and equity, could it be pretended that a general amnesty is not *due* to all parties implicated in the North-West difficulties?

Have those parties a right to claim it?

Is it not true:

1. That they were assured, by the representative of the Government, that the amnesty would be granted on certain conditions?

2. That that fact was communicated to the Government of Canada, which acted on it and benefitted by it?

3. That the least that can be said, is, that the delegates of those parties, and through them the insurgents themselves, were made to believe that if they would do as they have afterwards done, they would get amnesty without restriction?

4. That the stipulated conditions have been fulfilled by the insurgents and accepted by the Government?

There can but be an affirmative answer to each these of questions.

Lt.-Governor Archibald states in his evidence: "The people were undoubtedly convinced that there was to be an amnesty. I could not form any conclusion as to whether or not the people would have taken a different line if they had not been satisfied that there was to be an amnesty."

In their address to Lieutenant-Governor Archibald, the inhabitants of the parish of St. Norbert said: "Your Excellency will nevertheless allow us to say that we must not conceal from you that an essential feature is still wanting; we, nevertheless, expect it with confidence, seeing that it has been promised us by men whose words were never spoken in vain. Your Excellency in person has assured us that all that has been guaranteed by treaty cannot but be granted."

Do not all the facts and circumstances prove the conviction and belief of those parties?

Another reason why, according to all laws, a general amnesty should be granted, is that Mr. Archibald, as Lieutenant-Governor of Manitoba and Her Majesty's representative, during the Fenian invasion of October, 1871, accepted the services of Riel and other leaders of the insurrection, to organize their compatriots, over whom they were known to have an immense influence. He exchanged correspondence with them, promised them protection if they would help to repel the Fenians, and after they had brought their friends together, he met them, congratulated them, shook hands with them, and enlisted them to serve against an enemy of Her Majesty who was then invading the country. He communicated all those facts to the Canadian Government by his memorandum, No. 90.

Referring to the matter in his evidence, he says: "On looking back, I see nothing in the course I took that gives me any doubt as to its correctness. I would take it again under the like circumstances. If the Dominion have at this moment a Province to defend, and not one to conquer, they owe it to the policy of forbearance," etc.

Now, can it be maintained that after Her Majesty's Government had requested and accepted the services of these men, whose conduct, in those days of excitement, prevented a large portion of the North-West population from joining the invaders, and thus contributed to discourage and repel the enemy, and "to keep that Province in the Domain of Her Majesty," according to Mr. Archibald's own expression,—that they are still to be treated as rebels, and refused an amnesty which has already been

promised to them? I cannot believe it; such a policy would be unprecedented in the history of England, and, in my opinion, a misfortune.

When Lord Kimberley sent his despatch of the 24th of July, 1873, offering, in the name of the Imperial Government, to issue a proclamation not applying to all the parties implicated in those troubles, he, undoubtedly, considered the case as an ordinary one, and, like many Canadians, had no knowledge of the facts disclosed by the Report of the Committee of the House of Commons on the North-West difficulties; for had he known such facts, he would certainly have acted otherwise. I have no doubt that it is the duty of the Canadian Government to submit that evidence to the Imperial Government, and to recommend the adoption of the policy to which Canada has been pledged by the acts of her representatives. I doubt not that, after full information of all the circumstances, the Imperial Government will find it their duty to proclaim a general amnesty, extending to all parties implicated and covering all acts perpetrated by them as insurgents in the North-West disturbances during the years 1869 and 1870, without exception or restriction, for the above mentioned reasons.

Moreover, it appears, both from the evidence of many of the English settlers before the Committee, and from the addresses unanimously adopted by the two Houses of the Manitoba Legislature, in their session of 1872, and upon which is based their petition to Her Majesty, that the two races and the inhabitants of Manitoba generally, understand that an amnesty was promised, and are anxious that the matter should be definitively settled, and, as they say in their petition, *that all questions connected with those troubles should be set at rest.*

OTTAWA, 1st October, 1874.

(Copy—(No. 9.)

DOWNING STREET, 7th January, 1875.

MY LORD,—

I received, on the 29th ultimo, your despatch No. 305 of the 10th December, transmitting a copy of an Order-in-Council, in which your Ministers request that Her Majesty's Government will deal, in such a way as existing circumstances may seem to justify, with the whole question of the offences committed by Riel, Lepine and others in the North-West Territories of the Dominion, in 1869 and 1870.

2. This question has now passed into a stage requiring that it should be disposed of without delay, inasmuch as Lepine, one of the principal parties to the brutal and atrocious murder which formed the most notorious feature of the rebellion in Manitoba, now, lies under sentence of death for that crime, and it has become necessary to decide not only whether the extreme penalty of the law should be inflicted in his case, but also what course should be taken in the corresponding case of Riel, in the event of his submitting himself, or being brought to justice.

3. I fully recognize the force of the considerations which lead the Dominion Government to think that this is a case with which it is difficult, for several reasons into which I need not now enter in detail, for the Local Administration to deal; and I should have been prepared to instruct you formally on the subject, if, after considering the question in the altered aspect in which it is now presented to me, I were of opinion that such a course would be the most convenient.

4. There are, however, obvious objections, notwithstanding the full confidence which Her Majesty's Government are able to place in the completeness and impartiality of your very able exposition of the circumstances connected with this case, to their undertaking the decision of a question which can be thoroughly understood in all its bearings by those only who, residing on the spot, are familiar with every detail of it.

It is on account of the almost insuperable difficulty of ensuring a just and prudent decision on the part of persons who live at a distance, and are of necessity imperfectly acquainted with facts and opinions, that the Queen delegates to the Governors of her Colonies the administration of the prerogative of mercy in regard to cases arising within them; and I am clearly of opinion that in the thirty-ninth paragraph of your despatch you rightly indicate, as I have already intimated to you by telegraph, the course which it would be most correct to follow, namely that, acting under the powers vested in you by the Royal Instructions, you should yourself determine whether the sentence passed on Lepine should be carried out or modified. You observe that you propose to act in this matter on your own responsibility; and I believe that by proceeding in that manner in the present instance, that is to say, by relieving your Ministers, under the very peculiar circumstances in which they are placed, from the obligation under which they would lie, if the question were an ordinary one, of tendering advice to you respecting it, and by deciding according to your own individual judgment, you will best meet the requirements of the case.

5. But although, for the reasons which I have stated, I think it preferable that such action as may be taken should be formally and

technically your own and not that of Her Majesty's Government, I am quite willing to give you that assistance and support, which, as I gather from the third paragraph of your despatch, you and your Ministers consider that a dispassionate review of the whole question, accompanied by some expression of opinion on the part of this Government, would render; and I do this the more readily because it is pre-eminently a question as to which an impartial expression of carefully considered opinion from an authority which, although not directly connected with the many personal, political, religious, and national feelings that have been aroused, is not the less deeply interested in the maintenance of a harmonious relationship between the members of the Dominion, may be useful.

6. I will, therefore, at once proceed to state briefly the conclusion at which I have arrived on the whole subject, and which I have laid before Her Majesty as, in my humble opinion, combining justice and mercy in the highest degree compatible with those conditions of public policy which cannot be wholly overlooked: and it is with much satisfaction that I find myself able to agree with the course which you have yourself determined to be proper in the event of the considerations which have appeared to justify an amnesty not being found on examination such as to warrant the entire condonation of the crimes which have been committed.

7. Following then the order in which you have treated the subject, I may observe, in the first place, that it is obvious that neither the proclamation intended to be issued, but from certain causes not published, at Fort Garry in 1869, nor the correspondence cited in paragraphs 4 to 7 of your despatch, are in any way applicable to the condition of affairs which arose when, some time subsequently, the atrocious murder of Scott was committed. Nor can anything promised to the murderers (although in good faith) by Archbishop Taché, nor any impression or understanding that he or others may have formed of the purport of conversations or communications with individual Ministers, be deemed to have in any way pledged the Crown to extend an amnesty to acts which had not even been heard of by the Dominion Government, when he received the letters instructing him as to his proceedings at Fort Garry, and which on full examination could not fail to appear to be such as the Queen (if the Imperial Government should be required to act) could not be advised to leave unpunished. As Archbishop Taché's connection with this affair constitutes the first of the five reasons alleged for amnesty, I will now dispose of it by observing that with all respect for his honesty and good intentions, it is impossible to admit that he had any sufficient ground for believing that the Crown, or the Colonial Government acting for the Crown, did or could delegate to him, or to any other unofficial person, or indeed to anyone, as to a Plenipotentiary, an unlimited power of pardoning crimes, of whatever atrocity, not even known to have been committed. And your opinion that the Crown is in no way committed by any promises given by Archbishop Taché is the only one which I can consider tenable.

8. As to the second plea, based upon alleged conversations held in 1870 by Abbé Ritchot, Archbishop Taché and others, with the Governor General and Members of the Dominion Government, I had occasion some

time ago to examine the statements made on both sides, and I formed then, and still hold the distinct opinion that the misapprehension on the part of Abbé Ritchot (from whatever cause it proceeded) of the statements made to him, was so complete as to have led him entirely to misrepresent not only the views but the language of the Governor General and of other officers of the Government. If I in any degree qualify this statement in so far as it may be applicable to certain inaccurate or too encouraging observations which may have fallen from the late Sir G. Cartier, and which may possibly (although of this there is no adequate evidence,) have been such as reasonably to lead Abbé Ritchot to entertain too sanguine a hope as to the result of his advocacy, I must at the same time place on record my belief that Sir G. Cartier is sufficiently shown to have recollected the extent of his powers and of his duty to his Government, and to have on one occasion at least clearly explained that he could not promise or guarantee any pardon.

9. The third plea that the murderers of Scott represented a *de facto* Government, and are consequently excusable on political grounds, is one which I cannot for a moment entertain. There could be within the Queen's possessions in North America no power or pretence of establishing a *de facto* Government, independent of, or defying Her Majesty and Her officers, which could aspire to any such immunity as that claimed; and any argument based on the view of such a state of things being possible, is in my opinion not even worthy of discussion.

10. Nor am I able to take into consideration the grounds alleged, in the fourth place, in the 28th and 29th paragraphs of your despatch. They seem to me to have no bearing on the question at issue. I proceed therefore at once to the fifth place, which is based upon the dealings of Lieutenant-Governor Archibald with the murderers of Scott, when (in 1871), with very inadequate means at his disposal, he felt himself constrained to avail himself of everything within his reach to repel the Fenian invasion; then seriously threatening his Province.

11. Admitting that Mr. Archibald dealt with these persons as with any other members of the community, received valuable assistance from them, and not only formally thanked them, but promised them a temporary immunity from the consequences of their crime; I feel no hesitation in concluding that neither these transactions, nor even any further promise (if he had made one), of endeavouring to procure for them an amnesty, can be held to have placed the Crown under any obligation absolutely to condone so disgraceful a crime as that which they had committed.

12. Mr. Archibald cannot, in my opinion, be held to have represented the Crown in such a way as to have had any power of pledging its future action in regard to such transactions as those now under review. The Lieutenant Governors of the Provinces of the Dominion, however important locally their functions may be, are a part of the Colonial Administrative Staff, and are more immediately responsible to the Governor General in Council. They do not hold commissions from the Crown, and neither in power nor privilege resemble those Governors, or even Lieutenant Governors of Colonies to whom, after special consideration of their personal fitness, the Queen, under the Great Seal and Her own hand and signet, delegates portions of Her prerogatives and issues Her own instructions. But I do not desire to lay stress upon this point, because in dealing

with ignorant and half educated people, it is obviously desirable that due recognition should, as far as possible, be given to any acts or promises which may reasonably be thought to bind or pledge either the Colonial or Imperial Government.

But, thinking, as I do, that the services rendered by these offenders in 1871 deserve to carry considerable weight, and should be liberally taken into consideration when justice has to be executed with respect to their previous offences; and admitting, indeed, that it is as impossible to permit the extreme sentence of death to be inflicted upon persons who have been recognized and dealt with as they have, as it is to allow them to go unpunished, I feel that the question which I have to consider is, not whether they should be amnestied (for that is not to be heard of), but what kind of punishment will be just and reasonable in all the peculiar and conflicting circumstances of their case.

13. One of them has now been found guilty of murder by a jury, the composition of which was such as to secure an impartial consideration of everything that could be fairly urged on his behalf. And whilst I entirely concur in the justice of the verdict in Lepine's case, I cannot entertain the opinion that Riel, whose guilt was certainly not less, could be subjected to any less punishment than that which may be inflicted on Lepine.

14. On the whole, after a most anxious consideration of the whole question, I have come to the conclusion that you will act with both clemency and justice if you carry out the view expressed in the concluding portion of your despatch, that the capital sentence of Lepine should be commuted. You do not state what amount of imprisonment you would consider a proper commutation, but I assume that you contemplate a term sufficient to mark distinctly the sense which both the Crown and all right-minded men must entertain that his offence has been such as cannot be allowed to pass without substantial punishment. Whenever Riel submits himself, or is brought to justice, it would seem right that he should suffer a similar punishment to that of Lepine.

15. I have now explained to you the view taken by Her Majesty's Government of the difficult question with which you are called upon to deal. You will remember that my predecessor intimated to you that Her Majesty's advisers were of opinion that the murder of Scott must be excepted from the list of offences connected with the Red River disturbances for which an amnesty could be granted. And I feel confident that, as in the commencement of your despatch you encourage me to hope, a loyal acquiescence will be secured among the large majority of the Queen's Canadian subjects, in the opinion that although a murder such as that of Scott cannot be allowed to go unpunished, on the ground that it was connected with political disturbances, yet, in so far as it did result from political circumstances, those who were guilty of it may be deemed to have earned a merciful consideration through their subsequent good service to the State, and that for those services their lives should be spared. You will readily understand that in thus expressing to you a distinct opinion on the part of Her Majesty's Government, I am conveying the assurance of that support from without, which you have desired, and on which you may rely in the difficult circumstances in which you are placed.

16. There yet remains a further question, whether it should not be a condition of any commutation of sentence, that those actually concerned

in the murder of Scott should be deprived of the power of taking part in political affairs within the Dominion. It has been a source of much pain to many who, like myself, take pride in the public institutions of Canada, to hear of the Legislature being disgraced by the election to the House of Commons and the presence within its walls of a criminal like Riel; and I wholly fail to understand how any section of the Canadian people, of whatever race or creed, can so far mistake the true character of these unhappy proceedings as to throw over them the colour of patriotism. I should not therefore think it unreasonable, while it would undoubtedly conduce to a higher tone of constitutional morality, that the liberation of the criminals after the expiration of their commuted sentence, should be accompanied by some stringent conditions as to their good conduct, if they remain in any part of Canada, and by their total exclusion from any participation in political or parliamentary life.

Anticipating that your Ministers will share this opinion, I request you to consult them as to the manner in which such political disability as I have referred to may best be enforced.

I have, &c.,

(Signed,)

CARNARVON.

Governor-General,

The Right Honorable

The Earl of Dufferin, K.P., K.C.B.,

&c., &c., &c.

TELEGRAMS.

The Earl of Carnarvon to the Earl of Dufferin, Jan. 14th, 1875.

My despatch on Lepine sent last week approves your dispensing with Ministers' advice in accordance with your powers under instructions, intimates that neither amnesty nor entire pardon possible, but commutation approved. Riel should have similar punishment. Political disability desirable. Telegraph if you desire further information.

CARNARVON.

The Earl of Dufferin to the Earl of Carnarvon, January 20th, 1875.

Guided by the consideration set forth in my despatch to your Lordship of the 10th December, I directed my Minister of Justice, on the fifteenth of January, to take steps for the commutation of the capital sentence on Lepine into two years imprisonment and the forfeiture of his political rights.

DUFFERIN.

The Earl of Carnarvon to the Earl of Dufferin, Governor General, Canada, January 26th.

I fully approve course taken by you in Lepine's case.

CARNARVON.

CANADA.

(Copy—No. 17.)

MONTREAL, 29th January, 1875.

MY LORD,—

I have the honor to enclose, for your Lordship's information a number of extracts and leading articles from the various newspapers in the Dominion, both French and English, on the commutation of the capital sentence passed on Ambroise Lepine.

2. It cannot but give satisfaction to your Lordship to perceive with what general acquiescence the terms of the commutation have been accepted. Although the circumstances of the case deeply touched the feelings of both the English and French sections of the population, and afforded ample room for controversy and differences of opinion, there has been scarcely anything approaching to angry or violent comment, either upon the one side or the other. It has been universally felt that the subject was one of very great difficulty, and the moderation exhibited in all quarters is of the happiest augury for the future.

3. Personally I cannot help feeling deeply sensible of the confidence exhibited by the population, with whom I have the happiness of being connected, in the impartiality and soundness of the decision it has become my duty to arrive at in connection with this grave and momentous matter.

I have, &c.,

(Signed,) DUFFERIN.

The Right Honorable
The Earl of Carnarvon,
Colonial Office.

CANADA.

(No. 20.)

GOVERNMENT HOUSE,
OTTAWA, 3rd February, 1875.

MY LORD,—

In continuation of my correspondence in reference to the case of Lepine, I have the honor to inform your Lordship that I have received numerous petitions praying for a commutation of his sentence. These petitions, with very few exceptions, have been drawn up in the several towns and villages of the Province of Quebec, and the signatures show that the petitioners were in almost all cases of French origin. The number of petitions received amount to two hundred and fifty-two (252), bearing fifty-eight thousand five hundred and sixty-eight signatures (58,568).

I observe that several of the signatures are in the same hand-writing; but I have reason to believe that they have been in most, if not in all cases, appended by the priest or other person engaged in preparing the petition, at the desire of those whose names they bear.

I have, &c.,

(Signed,)

DUFFERIN

The Right Honorable

The Earl of Carnarvon,

&c., &c., &c.

GOVERNMENT HOUSE,

January 15th, 1875.

SIR,—I am commanded by the Governor General to inform you that His Excellency has had under his full and anxious consideration the evidence and other documents connected with the trial of Ambroise Lepine, who has been capitally convicted before the Court of Assize held at Winnipeg on the 10th day of October, 1874, of the murder of Thomas Scott, on the 4th of March, 1870, at Fort Garry.

Although His Excellency entirely agrees with the finding of the Jury, and considers that the crime, of which the prisoner Lepine has been convicted, was nothing less than a cruel and unjustifiable murder, he is of opinion that subsequent circumstances, and, notably, the relations into which the Provincial authorities of Manitoba entered with the prisoner and his associates, are such as, in a great degree, to fetter the hands of justice.

It further appears to His Excellency that the case has passed beyond the province of Departmental administration, and that it will be best dealt with under the Royal Instructions, which authorize the Governor General, in certain capital cases, to dispense with the advice of his Ministers, and to exercise the prerogative of the Crown according to his independent judgment, and on his own personal responsibility.

I have it, therefore, in command to inform you that it is His Excellency's pleasure that the capital sentence passed upon the prisoner Lepine be commuted into two years of imprisonment in gaol from the date of conviction, and the permanent forfeiture of his political rights.

His Excellency desires that the necessary instrument for giving effect to this commutation be forthwith prepared.

I have the honor to be, Sir,

Your most obedient humble servant.

H. C. FLETCHER,
Governor General's Secretary.

To the Honorable
The Minister of Justice,
Ottawa.

CANADA.

No. 9.

GOVERNMENT HOUSE, OTTAWA,
January 18th, 1875.

MY LORD,—In further reference to previous correspondence, I have the honor to enclose, for your Lordship's information, a copy of a communication I have addressed to the Honorable Telesphore Fournier, my Minister of Justice, instructing him to commute the capital sentence recently passed on Ambroise Lepine, into imprisonment for two years in gaol, and the permanent forfeiture of his political rights.

2. In thus dispensing with the advice of my responsible Ministers, and exercising the Queen's prerogative according to my own judgment, I am aware I have undertaken a very grave responsibility, more especially as the facts and considerations by which the issue has to be determined are of a very complex and embarrassing character. Upon these, however, I will not enlarge as they have already been fully set forth in former despatches.

3. I am quite convinced that the matter is one which, in the general interests of this country, will have been best dealt with by my direct action.

4. Although the commuted sentence may appear very inadequate to the enormity of the crime, of which it is the punishment, I believe it to be such as will best satisfy the conflicting exigencies of the case.

I have the honor to be, My Lord,

Your Lordship's most obedient

Humble Servant,

DUFFERIN

To the Right Honorable
The Secretary of State for the
Colonies.

